Supreme Court, U.S.
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No: 10

09-1332 APR 14 2010

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In the Supreme Court of the United States

Mr. Charles J. Sain
Petitioner,
vs.

Carolyn Snyder, et. al.
Respondents

On Petition for a Writ of Certiorari to the 10th Circuit Court of Appeals

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PETITION FOR A WRIT OF CERTIORARI

Mr., Charles J. Sain
10018 Inca Ct. N.E.
Albuquerque, NM 87111
(505) 298-1007

Mr., Charles J. Sain
Petitioner, Pro Se

Questions Presented

I. Can the Appellate Court consciously avoid and ignore a jurisdictional challenge? The Court of Appeals consciously avoided and ignored a jurisdictional challenge from Sain and then ruled against him without determining the issue.

II. Is Due Process violated when the Court consciously avoids and ignores all of the evidence, proofs, rules, laws, precedents and Constitutional mandates presented and relied on by a Party on one side in the litigation process and then rules against that Party without any proof in the record against that Party? The Appellate Court, after consciously avoiding and ignoring all of the evidence, proofs, rules, laws, precedents and Constitutional mandates presented and relied on for all issues by Sain, ruled against him without any proof in the record supporting its rulings.

III. Do the operation of the Constitution and laws suspend during the course of litigation? Throughout the pendency of the "case" Sain presented proof of the violations of the Constitution and Laws by defendants and others associated with the "case" but in every instance the Court consciously avoided and ignored the matters and ruled in favor of

those committing the violations.

IV. Can the Court utilize ARMED GOVERNMENT TROOPS against a citizen for the duration of his life (so that he is in constant fear of the loss of his life) without charges being filed, without evidence against him and without allowing him to prepare and present a defense? The Appellate and lower Courts and defendants in the "case" have utilized and put permanently in place the use of ARMED GOVERNMENT TROOPS against Sain to forever deny his Liberty and to harass, intimidate, and terrorize him in an attempt to scare him into dropping this "case" and then denied him his Rights to petition the government for redress of grievances, against search and seizure, to be informed of the nature and cause of the accusation, to confront his accusers, to a jury trial on the matter, against cruel and unusual punishment, to present evidence in his favor, to develop and present his case, against the deprivation of liberty without Due Process, to the Equal Protection of the Laws regarding the issue.

V. Is the 10th Circuit Court of Appeals a participant in an Organized Criminal Enterprise? Throughout the pendency of the "case" Sain has proven sufficient specific instances of predicate acts and Racketeering activity by the defendants and others associated with the "case" to constitute their

participation in an Organized Criminal Enterprise and the actions taken against Sain by the 10th Circuit Court of Appeals are hand-in-glove with the acts of those defendants and others sufficient to show that it is a participant in the Enterprise.

Parties to the Case

Mr. Charles J. Sain

Petitioner,

vs.

Carolyn Snyder, Bill Richardson, Gary King, Patricia Madrid, Betsy Salcedo, Richard C. Bossen, Charles W. Daniels, Petra Jimenez Maes, Edward L. Chavez, Patricio M. Serna, Lynn Pickard, A. Josepht Alarid, Michael D. Bustamonte, Michael Vigil, James J. Wechsler, Roderick Kennedy, William Lang, Ernesto Romero, Stanley Whitaker, Deborah Davis Walker, Elizabeth Whitefield, Juanita Duran, Vicki Aikenhead Ruiz, Jo Anne De Herrera, Richard Stoops, Mary E. Chappell, L. Helen Bennett and Bernalillo County Sheriff's Dept.,

Respondents

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Opinions Below (see Appendix I)

MANDATE (10th Cir. Doc. No. 01018400345) filed 04/12/2010. Mandate terminating Sain's Appeal No. 09-2153.

MANDATE (10th Cir. Doc. No. 01018400361) filed 04/12/2010. Mandate terminating Sain's Appeal No. 09-2175.

ORDER AND JUDGMENT* (10th Cir. Doc. No. 01018387570, Attached) filed 03/19/2010. Order Affirming the lower Court's Dismissal of the case and denying all of Sain's remaining motions.

ORDER TO SHOW CAUSE (10th Cir. Cons. Case No. 09-2153/09-2175, Doc. No. 9746491) filed 03/19/2010
and ORDER TO SHOW CAUSE (10th Cir. Cons. Case No. 09-2153/09-2175, Doc. No. 9746495) filed 03/19/2010. Orders alleging that Sain's filings with the Court are frivolous and without merit and compelling Sain to show cause why he should not be sanctioned $ 3000.00.

ORDER (10th Cir. Doc. No. 01018395456) filed 04/01/2010. Order denying Sain's APPELLANT'S MOTION FOR RECONSIDERATION AND FOR OTHER RELIEF (10th Cir. Doc. No. 01018392397, filed 03/27/2010) and Sain's APPELLANT'S OBJECTION TO REFUSAL TO ENTER EVIDENCE (10th Cir. Doc. No. 01018393238, filed

03/29/2010) and consciously avoiding and ignoring Sain's APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE (10th Cir. Doc. No. 01018392400) and compelling him to pay the sum of $ 3000 as a sanction.

ORDER (10th Cir. Doc. No. 01018398590, Attached) filed 04/07/2010. Order denying Sain's APPELLANT'S OBJECTION TO ORDER (10th Cir. Doc. No. 01018396914, filed 04/05/2010) and Sain's APPELLANT'S EMERGENCY PETITION FOR STAY TO CHIEF JUDGE ROBERT H. HENRY AND FOR OTHER RELIEF (10th Cir. Doc. No. 01018396923, filed 04/05/210). The Emergency Petition was not heard by the Chief judge. It appears to have been intercepted.

This petition is being filed within 90 days of the filing of the above listed Mandates and Orders.

Jurisdiction Statement

The jurisdiction of this Court is invoked under U.S.Const.Art. III, Art. VI, and, 28 U.S.C. § 1254. The decisions of the 10th Circuit Court of Appeals were entered between March 19, 2010 and April 12, 2010. Sain filed timely Motions for Reconsideration and for a Stay and Objections to the routine denials that ensued. This petition is being filed within 90 days after the issuance of the Mandates and Orders. The Court has jurisdiction pursuant to Article III,

Article VI, 28 U.S.C. § 1254.

Constitutional provisions and Statutes involved

18 U.S.C. 3, Accessory after the fact - Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

18 U.S.C. 241, Conspiracy against rights - If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same . . .They shall be fined under this title or imprisoned not more than ten years, or both;

18 U.S.C. 242, Deprivation of rights under color of law - Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this

title or imprisoned not more than one year, or both;

18 U.S.C. 371, Conspiracy to commit offense or to defraud United States - If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. 872, Extortion - Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits *or attempts an act* of Extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. 1343, Fraud by wire, radio, or television - Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. 1346, Definition of "scheme or artifice to defraud" - For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 U.S.C. 1503, Influencing or injuring officer or juror generally

18 U.S.C. 1623(a), False declarations before grand jury or court - (a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. 1962, Prohibited activities

18 U.S.C. 1962(c), Prohibited activities - (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

28 U.S.C. 1331, Federal question - The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

U.S.Const.Art. I, Sec. VI - The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S.Const.Art. II, Sec. 4 - The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

U.S.Const.Art. III, Sec. I - The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

U.S.Const.Art. VI, cl. 3 - The Senators and Representatives before mentioned, and the Members

of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S.Const.Amend. I - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.Const.Amend. VII - In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

U.S.Const.Amend XIII - Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S.Const.Amend. IX - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Fed.R.Civ.P. Rule 11(c)(1) - *In General.* If, after

notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

10th Cir.R. 46.5.(B) - Representations to court.

Statement of the Case

"Three things cannot be long hidden:
The sun, the moon, and the truth."

Gautama Siddhartha (Buddha), 563-483 B.C.

The Petitioner, Sain, is proceeding Pro Se and doing so because he has been forced into poverty while trying to protect himself from the Constitutional deprivations and the crimes that have been ongoingly perpetrated against he and his Children for more than seven years now. Do to his lack of legal training he respectfully asks that this Court not judge his Pleadings too harshly in terms of form and technical matters.(*Cruz v. Gomez*, C.A.2d, 2000, 202 F.3d 593 "courts must construe pro se pleadings broadly, and interpret them "to raise the strongest arguments that they suggest."; *Jenkins v.*

McKeithen, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R. Co.*, 151 Fed 2nd 24).

The instant Petition arises from proceedings in the 10th Circuit Court of Appeals wherein all matters favorable to Sain were consciously avoided and ignored and, without proof in the Record of the "case", the lower Court's dismissals and denials were Affirmed and all Motions seeking redress and all Objections filed by Sain were summarily Denied. Because of the unconstitutional and otherwise unlawful acts being perpetrated against Sain he is in constant fear for not only the permanent loss of his Liberty for unknown reasons (he is afraid that he will just "disappear" like what happens in certain Central and South American and Soviet-style and Fascist regimes) but the loss of his life at the hands of "the Enterprise" (see End Note 1). The matter arose to the Court of Appeals from the District Court pursuant to U.S.Const.Art. III, 28 U.S.C. § 1331, 1291 and 1294.

The original action arose from an unspecific legal action (see e. g. § 30, pp. 35-37, of APPELLANT'S REPLY BRIEF, 10th Cir. Doc. No. 01018344509) taken against Sain and, to paraphrase § 1 of his original Federal Complaint (see 10th Cir. Doc. No. 01018081803, pp. 30-31), is one of the most chilling episodes of premeditated judicial and prosecutorial misconduct and corruption in modern American history, which has resulted in the vicious, wilful, intentional and malicious assault, brutalization and terrorization by State and Federal Officials and others at many levels brought over an ongoing

period of more than seven years and maintained against a loving and gentle, stay-at-home, father with no criminal record and who committed no crime but was dragged against his will into the grips of the Organized Criminal Enterprise that runs and controls with absolute corruption, brutality and tyranny the Courts of the State of New Mexico, the Federal District Court District of New Mexico and the Tenth Circuit Court of Appeals.

So severe is the unconstitutional and otherwise unlawful and ongoing brutalization and terrorization of Sain, and having no place else to turn because of the complete lack of the constitutional rule of law in New Mexico, that he sought Asylum with the Roman Catholic Church (see the referenced Doc. 01018081803, p. 183), the Church he was raised in, but was turned down at the National level of the Church because of its naive and mistaken belief that Due Process is available in New Mexico.

Sain then sought Asylum with the Federal Government but the matter was, unbelievably, turned back over to the State of New Mexico which, because of their perpetuation of the deprivation of Sain's Rights and crimes (see End Note 2) being committed against him by consciously avoiding and ignoring the matters causal of the Asylum request (" '[T]he rule is that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowlege.' " *Jewell*, 532 F.2d at 700 (quoting G. Williams, Criminal Law: The

General Part, § 57, at 157 (2d ed. 1961) (emphasis added); see also *Ramsey*, 785 F.2d at 189 (deliberate ignorance is evidenced by defendant with "lurking suspicion" who " goes on as before and avoids further knowledge "; also, "While individuals need not have participated directly in a deprivation to be liable, see *McPhaul v. Board of Comm'rs of Madison Co.*, 226 F.3d 558, 566 (7th Cir.2001), supervisors will only be liable for subordinates' misconduct when they "know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see. [Supervisors] must in other words act either knowingly or with deliberate, reckless indifference" for liability to accrue. *Chavez*, 251 F.3d 651)) even though they do not deny having knowledge of the crimes and *despite* the facts that (1) it is King's personnel and Offices (New Mexico Attorney General) that are directly responsible for the crimes and (2) it is Richardson's Constitutional duty as Governor to take care that the laws of New Mexico are enforced (see End Note 3), is how defendant's King and Richardson involved themselves with these matters (see pp. 183-185 of the referenced Doc. 01018081803) by aiding and abetting those directly perpetrating the constitutional deprivations and crimes (see also § 33. pp. 39-40 of APPELLANT'S PRELIMINARY BRIEF, 10th Cir. Doc. No. 01018294188, and §s 33, 35, 36, pp. 39-46, of the REPLY BRIEF) against Sain.

I.

Jurisdiction was challenged (see APPELLANT'S PRELIMINARY BRIEF, §s 2-6, pp. 11-14;

APPELLANT'S REPLY BRIEF, § 30, pp. 35-37, § 38.(F), p. 51; Conclusion, p. 54; APPELLANT'S MOTION FOR RECONSIDERATION AND FOR OTHER RELIEF, 10th Cir. Doc. No. 01018392397, § 38 and FN 3, pp. 13-14) by Sain (see *Speight v. Horne*, 133 So. 574, 101 Fla. 101, rehearing denied 135 So. 528, 101 Fla. 108, "when at any time or in any manner it is represented to the court that it has not jurisdiction, the court should examine the grounds of its jurisdiction before proceeding further, the question of jurisdiction being always open for determination"; *Townsend v. Gordon*, 19 Cal. 188, 197, 1861 WL 988, Cal. 1861, "The jurisdiction of every Court may be inquired into in every other Court before which its proceedings are brought; and any judgment is void when the record discloses a want of jurisdiction. (*Elliott v. Piersol*, 1 Pet. 340-1; *Wilcox v. Jackson*, 13 Pet. 511; *Hickey v. Stewart*, 3 How. 750, 756, 758, 761, 763, a strong case, quoting and approving *Elliott v. Piersol* and *Wilcox v. Jackson*; *Bloom v. Burdick*, 1 Hill, 139, 141; *Downs v. Fuller*, 2 Met. 135, 137-9.") but the challenge was consciously avoided and ignored and jurisdiction was never proven.

Because both the Court and the Defendants failed in their burden ("Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted", *Latana v. Hopper*, 102 F.2d 188; *Chicago v. New York*, 37 F.Supp 150; "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal.", *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So.2d. 368 (Fla. 2nd DCA 1985); "Once challenged, jurisdiction

cannot be assumed, it must be proved to exist.", *Stuck v. Medical Examiners*, 94 Ca. 2d. 751, 211 P.2d. 389; "[T]he burden of proving jurisdiction is on the party asserting it," *Gibson v. Jeffers*, 478 F.2d 216, 221 (10th Cir.1973)) to prove that jurisdiction attained below all of the various Court's actions, including those at both the Appellate and District Courts (including the District Court's Orders 176 and 212 affirmed by the Appellate Court), taken against Sain and his Children throughout the seven-year pendency of the "case" were taken without jurisdiction and are therefore void as Sain claimed (see *Elliot v. Piersol*, 1 Pet. 328, 340-341, 26 U.S. 328, 340-341 (1828), stating:

> "Where a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other Court. But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers.
> This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any Court exercising authority over a subject, may be inquired into in every Court, when the proceedings of the former are relied on and brought before the latter by the party claiming the benefit of such proceedings.";

see also

> "A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers.", *High v. Southwestern Insurance Company*, 520 P.2d 662, 1974 OK 35 (Okla.1974))

Therefore the Appellate Court, acting with full knowledge of said lack of proof of jurisdiction, had no basis for its mandates, affirmations and denials, its Orders regarding same are void and Sain's consolidated Appeals should have been immediately granted because all of the claims and relief he requested therein arose from acts taken against he and his Children without jurisdiction.

The mandates and affirmance and denial orders having no basis, deprived Sain of his U.S.Const.Amend. IX Rights to Due Process, Equal Protection and, in regards to his causes of action and unwarranted Court filing fees, his Property Rights (""Property," as that term has been construed within the constitutional guaranty against the deprivation of property without due process, includes various rights and interests, such as a cause of action . . ." 16C C.J.S., Constitutional Law § 984. "The right to a

cause of action has long been held to be a protected property interest." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982)) and must be reversed.

II.

Despite and in spite of Sain's valid and undisproved jurisdictional challenge, as the purported basis for its mandates, affirmations and denials the Appellate Court alleged that Sain's appeals are "frivolous" and "without any merit" (see the referenced ORDER AND JUDGMENT*, 10th Cir. Doc. No. 01018387570) however, as pointed out to the Appellate Court by Sain (see the referenced 10th Cir. Doc. No. 01018392397, §s 28-35, pp. 9-12, §s 44-53, pp. 16-20; APPELLANT'S OBJECTION TO ORDER, 10th Cir. Doc. No. 01018396914, §s 2-3, p. 2, § 14, p. 8, § 17-18, p. 9-10, §s 26-33, pp. 16-19, prayer, pp. 19-20) there is no proof in the record that supports such allegations. Said lack of proof was consciously avoided and ignored by the Appellate Court and it simply Denied (see ORDER, 10th Cir. Doc. No. 01018395456, and ORDER, 10th Cir. Doc. 01018398590) the Motion for Reconsideration and the Objection without comment or proof.

Without proof, the Appellate Court had no basis for their allegations that Sain's filings were "frivolous" and "without any merit" and therefore no basis for their mandates, affirmations and denials which means that Sain's Due Process and Equal Protection Rights under U.S.Const.Amend. IX were violated

because his Consolidated Appeals were arbitrarily dismissed without proof (See, e. g. *Anderson v. U. S.*, 417 U.S. 211, 223, 94 S.Ct. 2253, 2261, U.S.W.Va. 1974 stating: "Moreover, as we have had occasion to note, a claim that a conviction is based on a record lacking any evidence relevant to crucial elements of the offense is a claim with serious constitutional overtones. See, e.g., Thompson v. City of Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960); Johnson v. Florida, 391 U.S. 596, 88 S.Ct. 1713, 20 L.Ed.2d 838 (1968). See also Adderley v. Florida, 385 U.S. 39, 44, 87 S.Ct. 242, 245, 17 L.Ed.2d 149 (1966). Accordingly, even though the sufficiency-of-the-evidence issue was not raised below with any particularity, we think the interests of justice require its consideration here. See Screws v. United States, 325 U.S. 91, 107, 65 S.Ct. 1031, 1038, 89 L.Ed. 1495 (1945) (opinion of Douglas, J.). Cf. Lawn v. United States, 355 U.S. 339, 362 n. 16, 78 S.Ct. 311, 324, 2 L.Ed.2d 321 (1958)").

The Appellate Court Affirmed (see the referenced 10th Cir. Doc. No. 01018387570, p. 2) the lower Court's Orders 176, 212, 225, 230 and 233 but not only did it consciously avoid and ignore ***all*** of the evidence, proofs, rules, laws, precedents and Constitutional mandates relied on by Sain disproving said Orders and proving a legion of violations of the law and his Rights (see End Note 4) but also failed, just as the District Court failed, to point to ***any*** proof in the record disproving ***any*** of said evidence, proofs, rules, laws, precedents and Constitutional mandates relied on by Sain disproving said Orders and also failed to present

anything new that did.

As described in the referenced 10th Cir. Doc. No. 01018387570, p. 2-3, the Appellate Court Denied Sain's (1) MOTION FOR SANCTIONS (10th Cir. Doc. No. 01018315139); (2) CONSOLIDATED RESPONSE TO MOTIONS FOR EXTENSION OF TIME AND REQUEST FOR AFFIRMATIVE RELIEF (10th Cir. Doc. No. 01018315149); (3) MOTION FOR TELECONFERENCE (10th Cir. Doc. No. 01018322117); (4) SUPPLEMENTAL MOTION FOR SANCTIONS (10th Cir. Doc. No. 01018322134); (5) EMERGENCY MOTION FOR ORDER OF CONTEMPT AND FOR FURTHER AFFIRMATIVE RELIEF (10th Cir. Doc. No.); (6) MOTION FOR REFUND OF FILING FEE AND FOR OTHER RELIEF (10th Cir. Doc. No. 01018344496) and in so doing the Court consciously avoided and ignored ***all*** of the evidence, proofs, rules, laws, precedents and Constitutional mandates relied on by Sain in each of those Motions as well as in the Documents Sain filed that are related to them (see APPELLANT'S EXHIBITS 8-14 (10th Cir. Doc. Nos. 01018315140-01018315146), APPELLANT'S REPLY TO STATE'S RESPONSE TO APPELLANT'S MOTION FOR SANCTIONS (10th Cir. Doc. No. 01018324957), APPELLANT'S REPLY TO APPELLEE CAROLYN M. SNYDER'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR ORDER OF CONTEMPT AND FOR FURTHER AFFIRMATIVE RELIEF (10th Cir. Doc. No. 01018333831, APPELLANT'S ERRATA SHEET REGARDING HIS CONTEMPT MOTION AND REPLY (10th Cir. Doc. No. 01018338761).

Restating that which Sain stated in § 29, pp. 9-10, of the referenced 10th Cir. Doc. No. 01018392397:

"So complete has been said conscious avoidance and ignoring in fact that upon reading the various dismissal, denial and Affirmance Orders (including the referenced "O-1" and "O-2") filed against Appellant in the lower and instant "case"(s) a reasonable and prudent man would have probable cause ("In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310) to believe that Appellant had filed nothing in his defense because there was virtually no mention of same in the Orders let alone any proof that Appellant's defenses were frivolous or meritless."

The routine by the Appellate Court to consciously avoid and ignore all the evidence, proofs rules, laws, precedents and Constitutional mandates relied on by Sain was continuously assailed by him below and throughout the referenced APPELLANT'S PRELIMINARY BRIEF (see End Note 5) and APPELLANT'S REPLY BRIEF (see End Note 6) to no avail.

Sain would appreciate this Court taking Judicial Notice of the following particularly egregious instances of the routine conscious avoidance and ignoring tactic.:

1) Brack's Act Immunity Scam is wholly meritless, unconstitutional and was concocted solely to protect his co-conspirator judge Garcia (see §s 19.(13), p. 27 and 62.G., p. 64, of the BRIEF, and § 11.(D)/(E), p. 21, and § 28. pp. 34-35, of the REPLY BRIEF) thereby making Brack and the Court of Appeals, because they supported the bogus fabrication, accessories to, aiders and abettors of and principles in Garcia's violations of Sain's Rights and of the laws (see 10th Cir, Doc, No. 01018081803, pp. 1291-1316, proving violations of 18 U.S.C. 1623 (a), 1503, 1962(c), 1343, and violations of Sain's Due Process and Equal Protection Rights under Amends. I and IX.). Not only does the Scam eliminate all review of any and all rulings by any judge anywhere against anyone, lawful or not (an order mandating the death penalty for a person convicted of littering would not be reviewable), but it also violates Sain's Due Process and Equal Protection Rights under Amend. IX and his 1st Amend. Right to seek redress against the unconstitutional and otherwise illegal acts perpetrated by Garcia against him thereby denying Sain a remedy. ("The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.", ""it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."", *Marbury v. Madison*, 1 Cranch 137, 163, 1803 WL 893, U.S.Dist.Col.,1803).

2) Despite the fact that Sain proved that his case

was properly removed under 28 U.S.C. 1331 (see § 14-15, pp. 24-26, of the REPLY BRIEF) contrary to Brack's dismissal Order 212 (see above) regarding same (subject matter jurisdiction) the Appellate Court consciously avoided and ignored the proof and, despite a complete lack of proof in the Record disproving Sain's proof that the Domestic Relations Exception does not Apply to cases brought under § 1331, affirmed Brack's invalid Domestic Relations Exception claim. Because Sain's case was dismissed on the invalid Domestic Relations Exception claim his Due Process and Equal Protection Rights under U.S.Const.Amend. IX were violated as were his 1st Amend. Rights to seek redress through the courts.

3) In regards to Brack's claim that the ten day rule denied him jurisdiction to Rule on Sain's Rule 60. Motion (see D.C. Doc. 225, pp. 2-3), Sain fully briefed the jurisdiction and ten day rule matters (see D.C. Docs. 226, 232, 235, and 10th Circuit Doc. Nos. 01018257110 (APPELLANT'S OBJECTION TO ORDER REQUIRING ADDITIONAL FEES PAYMENT), 01018259716 (APPELLANT'S OBJECTION TO ORDER DENYING APPELLANT'S OBJECTION TO ORDER REQUIRING ADDITIONAL FEES PAYMENT) and 01018344496 (APPELLANT'S MOTION FOR REFUND OF FILING FEE AND FOR OTHER RELIEF) and proved that not only did Brack have jurisdiction to rule on the Motion but that the ten day rule is arbitrary, oppressive, places an unfair time and monetary burden on him, violates his Substantive and Procedural Due Process and Property Rights under U.S.Const.Amend. IX, that it is easily

manipulated by criminals like Brack (see FN 1, p. 15, of PLAINTIFF'S OBJECTION TO ORDER DENYING PLAINTIFF'S OBJECTION TO ORDER DENYING OBJECTION (D.N.M. Doc. 235) proving Brack is a criminal) and is inapplicable in this instance. All of those matters favorable as they are to Sain were consciously avoided and ignored and despite the fact that there is no proof in the record disproving Sain's exhaustive briefing of the matter, the Appellate Court simply denied the Motion (see above) thereby robbing from Sain a second filing fee and violating his Due Process, Equal Protection and Property Rights under Amend. IX. The Denial clearly and undeniably violated Appellant's Due Process and Equal Protection Rights under Amend. IX as well as his Property Rights because it resulted in the robbery from Sain of the second filing fee.

4) Appellant has continuously pressed the lying issue throughout the Appellate and District Court "cases" (see e.g. §s 11-14 and FN 4, pp. 18-21 of the Brief) but the entire matter was consciously avoided and ignored in both Courts.

At the Appellate Court Appellant sought sanctions for the ongoing lying and Rules violations being utilized to gain favorable rulings from the Court (see 10th Cir. Docs. 01018315139 (APPELLANT'S MOTION FOR SANCTIONS (Appellant's Exhibits 8-14 Attached, see Docs. 01018315140-01018315146), 01018324957 (APPELLANT'S REPLY TO STATE'S RESPONSE TO APPELLANT'S MOTION FOR SANCTIONS) (proving therein that the response was also deceptive and that it was not timely filed),

01018332325 (APPELLANT'S REPLY TO STATE'S RESPONSE TO APPELLANT'S MOTION FOR SANCTIONS) and 01018322134 (APPELLANT'S SUPPLEMENTAL MOTION FOR SANCTIONS) but even though Sain proved in the Supplemental Motion that the lying tactic was also being perpetrated in another, unrelated case (see Appendix III) by a lawyer (Anderson), representing the law firm (Robles, Rael & Anaya, P.C.) and who represent the defendants (Richardson, Lang, Alarid and Walker) all of whom (lawyer, law firm and defendants) are also part of his Consolidated Appeals and that said actions were proof of bad faith and violated 18 U.S.C. 3, 1343, 1503, 1962(c), and they all should be sanctioned (including the law firm, see Fed.R.Civ.P. Rule 11(c)(1), and even though the lying claims were never denied nor was any proof presented disproving Sain's evidence and claims, not even that was worthy of a favorable ruling for Sain from the Appellate Court. The entire matter was consciously avoided and ignored and the Motions were denied by the Appellate Court (see above) in clear protection of "the Enterprise". The Denials clearly and undeniably violated Appellant's Due Process and Equal Protection Rights under Amend. IX.

5) As a corollary to the Court's protection of "the Enterprise" from losing because of their ongoing lying, bad faith and violations of the law, the Appellate Court also denied (see Order, 10th Cir. Doc. No. 01018339830) Sain's APPELLANT'S EMERGENCY MOTION TO STRIKE BRIEFS (10th Cir. Doc. No. 01018336565) and also failed to strike

the briefs that were late-filed as a direct result of the lying schemes described above even though the Court had clear and undeniable knowledge and proof of the schemes and their fraudulence. The Denial clearly and undeniably violated Appellant's Due Process and Equal Protection Rights under Amend. IX.

6) Similarly, the Appellate Court consciously avoided and ignored Sain's APPELLANT'S EMERGENCY MOTION FOR ORDER OF CONTEMPT AND FOR FURTHER AFFIRMATIVE RELIEF (10th Cir. Doc. No. 01018329239) which he filed because, in bad faith and in clear contempt of the Court's Order (10th Cir. Doc. No. 01018324556), Snyder/Stoops et. al. failed to "file a corrected brief, on behalf of appellee Snyder only" as required by the Order. As described in § 12, pp. 12-13, of APPELLANT'S REPLY TO APPELLEE CAROLYN M. SNYDER'S RESPONSE TO APPELLANT'S EMERGENCY MOTION FOR ORDER OF CONTEMPT AND FOR FURTHER AFFIRMATIVE RELIEF (10th Cir. Doc. No. 01018333831) (proving their response was fraudulent and violated 18 U.S.C. 1503, 1343 and 10th Cir.R. 46.5.(B)) for the Court to continue to hold Snyder unaccountable for her ongoing violations of Court Orders is a violation of his Equal protection Rights. The Denial violated Appellant's Due Process and Equal Protection Rights under Amend. IX.

7) Throughout the State and Federal District and Appellate Court portions of this "case" Sain has briefed the entire spectrum of the immunity issues

claimed by "the Enterprise" including Brack's Act Immunity Scam (see e. g. §s 5-17 (esp. § 11, pp. 6-7), pp. 2-12 of D.N.M. Doc. 214, the BRIEF and REPLY BRIEF as described above and most recently in § 32, p. 10 of the referenced 10th Cir. Doc. No. 01018392397) and despite all the documents that have been filed in the "case" and in all the time that has passed (see §2, pp. 7-12 of the REPLY BRIEF) no proof, not one shred, has emerged in the record that any of Sain's evidence, proofs, arguments or authorities regarding the issue are invalid. The entire matter was consciously avoided and ignored and Sain's "case" was dismissed based on immunity, the only evidence in the record regarding which proves its invalidity and unconstitutionality, thereby violating his Due Process and Equal Protection Rights under Amend. IX as well as his 1st Amend Rights to seek redress through the courts.

And lest this Court take the tack that immunity, although an unconstitutional fabrication in the first place, is a necessary evil that society can not do without because people have arranged their lives around it as similarly reasoned regarding Abortion in *Planned Parenthood of Southeastern Pennsylvania, et al. v. Robert P. Casey, et al.*, 505 U.S. 833, 112 S. Ct. 2791; 120 L. Ed. 2d 674 (1992) ("The Constitution serves human values, and while the effect of reliance on Roe cannot be exactly measured, neither can the certain costs of overruling Roe for people who have ordered their thinking and living around that case be dismissed."), Sain humbly reminds this Court that when this Country was founded slavery had been around for much longer

than this Country has now been in existence and society had arranged itself around that abomination. Yet, because it was the intent of the founders to provide for true equality for all under the laws, it did not stop them from immediately acting to abolish slavery with said actions culminating in the enactment of the Seven Instruments of Equality which provide for true equality under the law and provide immunity for noone (see Section II of Sain's Complaint, pp. 201-255 of 10th Cir. Doc. No. 01018081803). Society is doing just fine without slavery and there is no proof that society would have fallen apart without the unlawful fabrication of immunity. In fact, using the longevity and stability of the Irish model wherein all were equal (see pp. 198-199 of Doc. No. 01018081803) it can be substantially argued that society would do just fine without immunity. To claim otherwise is nothing but foolish and unfounded speculation.

8) But the conscious avoidance and ignoring of everything favorable to Sain did not just magically begin at the Federal Court level of this "case". As described in §s 1-6 of Sain's APPELLANT'S EMERGENCY PETITION FOR STAY TO CHIEF JUDGE ROBERT H. HENRY AND FOR OTHER RELIEF (10th Cir. Doc. No. 01018396923) the mismatch between the rulings in this "case" and the evidence, the Rules, judicial precedent, statutory law and the Constitution began right from the beginning when the "case" was still at the State Court level. Although Sain did not have as much research time in the law back then as he does now he recognized that something was horribly wrong in

terms of the way things were happening. For lack of a better description Sain identified the mismatch as "Case Fixing" and as the Record proves said "Case Fixing" has continued all the way up through the Appellate Court to Sain's detriment.

As the Record proves, Sain thoroughly and exhaustively briefed the conscious avoidance issue (see esp. §s 18.-21, pp. 23-30, and 31-37, pp. 39-43 of the BRIEF) and presented on-point precedent from the Supreme Court, the 10th Circuit and other Courts that conscious avoidance can not be used to avoid issues and ignoring evidence is grounds for reversal or remand (see the REPLY BRIEF, pp. 11-12)(see *Anderson, et al. v. Beatrice Foods Co.*, 20 Envtl. L. Rep. 20; 31 ERC 1161; 31 ERC 1584; 900 F.2d 388, Abuse [of discretion] occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them. *Fashion House*, 892 F.2d at 1081; see also *Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co.*, 864 F.2d 927, 929 (1st Cir.1988); *Butler v. Watkins*, 20 L.Ed. 629; 80 U.S. 456; 13 Wall. 456 (reversed and new trial ordered on grounds that evidence of Deceit and Fraud was not allowed); *Tennant v. Peoria & P.U.RY. Co.*, 88 L.Ed. 520; 321 U.S. 29; 64 S.Ct. 409 (See 321 U.S. 802, 64 S.Ct. 610) (reversed and remanded for lack of Evidence); *Pullman-Standard v. Swint*, 456 U.S. 273, 102 S.Ct. 1781,

U.S.Ala.,1982, reversed and remanded for failure to consider evidence; *Trout v. Nationwide Mut. Ins. Co.*, 316 Fed.Appx. 797 C.A.10 (Colo.), (2009) (reversed and remanded for ignoring evidence); *Williams v. Sullivan*, 947 F.2d 955, C.A.10 (1991) (reversed and remanded for failure to consider evidence); *Gamber v. Bowen*, 823 F.2d 242, C.A. 8, (1987) (reversed and remanded for failure to develop the record, ignoring evidence, failure to investigate evidence); *Sterling Smokeless Coal Company v. Akers*, 131 F.3d 438, C.A. 4 (1997) (vacated and remanded for ignoring evidence)) but even those were consciously avoided and ignored.

Because the case was brought to enforce the Constitutional Rights of Sain the Appellate and District Courts had the duty to determine all of the questions involved in the case ("In cases brought to enforce constitutional rights, the judicial power ... necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function." *Crowell v. Benson*, 285 U.S. 22, 60 (1932)) but in that the District and Appellate Courts have failed, completely failed.

Also as pointed out to the Appellate Court by Sain in § 5, p. 2, and §s 29-35, pp. 9-12, of the referenced 10th Cir. Doc. 01018392397, and § 26-29, pp. 16-18, of the referenced 10th Cir. Doc. 01018396914, the Appellate Court provided no proof that would support their mandates, affirmations and denials and such proof is non-existent in the Record. Said lack of proof (see e. g. Appellant's BRIEF (10th Cir.

Doc. No. 01018294188), § 28, pp. 36-37, § 61, pp. 57-58, § 62.D., pp. 60-62, § 62.I., p. 65, § 63, p. 67, Conclusion, pp. 69-70; and Appellant's REPLY BRIEF (10th Cir. Doc. No. 01018344509), §s 16-17, pp. 26-27, §s 20-23, pp. 28-32, § 26, pp. 32-33, § 30, pp. 35-37, § 32-33, pp. 38-40, § 38.(F), Conclusion, pp. 53-54) was also raised by Sain below but in every single instance the issue was also consciously avoided and ignored by the Appellate Court.

To dismiss a case with no proof violates Due Process (see the Supreme Court's no-evidence criterion: *Thompson v. Louisville*, 362 U.S. 199 (1960), 80 S.Ct. 624, stating "Thus we find no evidence whatever in the record to support these convictions. Just as "Conviction upon a charge not made would be sheer denial of due process," (*De Jonge v. Oregon*, 299 U.S. 353, 362. See also *Cole v. Arkansas*, 333 U.S. 196, 201), so is it a violation of due process to convict and punish a man without evidence of his guilt.(see *Schware v. Board of Bar Examiners*, 353 U.S. 232; *United States ex rel. Vajtauer v. Commissioner*, 273 U.S. 103, 106; *Moore v. Dempsey*, 261 U.S. 86; *Yick Wo v. Hopkins*, 118 U.S. 356. Cf. *Akins v. Texas*, 325 U.S. 398, 402; *Tot v. United States*, 319 U.S. 463, 473 (concurring opinion); *Mooney v. Holohan*, 294 U.S. 103.; see also the referenced 10th Cir. Doc. 01018392397, proof in the record is required (referencing *Pasquantino v. U.S.*, 544 U.S. 349, 372, 125 S.Ct. 1766, 1781, U.S., 2005)). The fact that this is a civil case is immaterial because it would be absurd to claim that proof is required in a criminal case but not in a civil case. Sain's Due Process Rights were violated when his

"case" was dismissed with no proof.

Based on the proof in the Record and the weight of authority, the Appellate and lower Court's schemes to consciously avoid and ignore everything favorable to Sain and to eliminate his cases without proof or jurisdiction are clearly and manifestly unconstitutional and have undeniably violated Sain's Due Process, Equal Protection and Property Rights and his Right to seek redress through the Courts, are outrageous government conduct ("The defense of outrageous government conduct is limited to extreme cases in which the government's conduct violates fundamental fairness and is shocking to the universal sense of justice mandated by the Due Process Clause of the Fifth Amendment." *Gurolla*, 333 F.3d at 950 (citations and internal quotation marks omitted). We have found outrageous government conduct in instances where the government has "engineer[ed] and direct[ed] the criminal enterprise from start to finish," *United States v. Smith*, 924 F.2d 889, 897 (9th Cir.1991)), and can not, must not, be allowed to stand. The Appellate Court's Orders must be reversed.

III.

As described in §s 4.A. and 5. of Section II of Sain's Complaint (10th Cir. Doc. No. 01018081803, pp. 205-207) the operation of the laws applies to members of Congress even when they are in session (see U.S.Const.Art. I, Sec. VI, "Treason, Felony and Breach of the Peace"). Said operation also applies to

judges (see § 7. of Section II of Sain's Complaint (10th Cir. Doc. No. 01018081803, pp. 207-208)) during the performance of their governmental duties ("The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, . . .", U.S.Const.Art. III, Sec. I) as it does to the President, Vice President and all civil Officers of the United States (see U.S.Const.Art. II, Sec. 4) who can be convicted of "Treason, Bribery, or other high Crimes and Misdemeanors" and removed from office for their violations.

It is also undeniable that U.S.Const.Art. VI, cl. 3, mandates that the Senators and Representatives of the United States, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, "to support this Constitution" and under 18 U.S.C. 241 and 242 criminal penalties apply to actions of anyone, including the actions of federal officers (issue raised below, see §s 30-31, pp. 18-19, of the referenced Objection, 10th Cir. Doc. No. 01018396914) taken under color of federal law (see *U. S. v. Otherson*, C.A.9 (Cal.) 1980, 637 F.2d 1276, certiorari denied 102 S.Ct. 149, 454 U.S. 840, 70 L.Ed.2d 123), who subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States" and who "conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any

right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same." (see §s 30.-33., pp. 18-19, of the referenced 10th Cir. Doc. No. 01018396914).

It is beyond doubt that the plain meaning and clear and unambiguous intent of Congress when enacting the Constitution and laws of the United States is to hold both State and Federal government officials, including judges, accountable under the Constitution and laws for their violations of a person's Rights and of the laws and that said accountability applies to said officials during the performance of their governmental duties.

In light of the foregoing it is beyond doubt that the operation of the Constitution and laws is not suspended during the pendency and proceedings of any litigation, whether it be a valid proceeding or a sham proceeding, and anyone, including government officials, who violates or conspires to violate a person's Rights or who violates the law during the course of litigation is criminally liable.

IV.

As described throughout Doc. 01018392397 as well as Docs. 01018392399 (APPELLANT'S EXHIBIT 21, Transcript of telephonic communications between

Sain and the Appellate Court), 01018392401 (APPELLANT'S ERRATA SHEET REGARDING DOCUMENTS FILING DATES), 01018393238 (APPELLANT'S OBJECTION TO REFUSAL TO ENTER EVIDENCE), 01018396914 (APPELLANT'S OBJECTION TO ORDER), and 01018396923 (APPELLANT'S EMERGENCY PETITION FOR STAY TO CHIEF JUDGE ROBERT H. HENRY AND FOR OTHER RELIEF), and in his APPELLANT'S EXHIBITS 16-20 (Recorded telephonic communications between Sain and U.S. Marshal Vinnie Gambone and statement by Sain's Father), the Appellate Court, just the day before they issued their baseless affirmation, denial and sanctions Orders, is utilizing ARMED GOVERNMENT TROOPS against Sain without cause. Said TROOPS (in similar fashion as in the TROOPS matter described in End Note 2 below) would not tell Sain who had caused them to contact him, what he had done to warrant their actions or why they wanted to meet with him (even for "two minutes") all being violations of Sain's 6th Amend. Rights under Amend. IX. They also admitted that it had something to do with he filing documents (which he has a 1st Amend. Right to do) in the case and that Sain has not been accused of a crime and that no warrants or subpoenas had been issued against him but continued to press for a "meeting" which Sain interpreted as a "fishing expedition" to try to get him to say or do something that they could twist into a reason to arrest him.

The record proves that the two TROOPS schemes are nearly as identical as they are baseless and,

having no lawful purpose, must be conclusively presumed to be intentionally designed to harass, intimidate and terrorize Sain into dropping his "case", are clearly outrageous (*Gurolla*, *Smith*, supra), must be stopped and all those responsible held accountable to Sain.

Also, in keeping with the ongoing schemes of "the Enterprise" (described in the referenced documents as well as in the referenced APPELLANT'S MOTION FOR RECONSIDERATION AND FOR OTHER RELIEF, Doc. 01018392397) to prevent evidence from being entered, to tamper with evidence which has been entered and to tamper with the record and to prevent Sain from having access to relevant evidence, the Appellate Court schemed to prevent Sain from entering his Exhibits 16-20 regarding the TROOPS matter into the record in violation of his 1st and 9th Amend Rights. Only after Sain Objected (Doc. 01018393238) did the Court enter the Exhibits (see ORDER, Doc. No. 01018395456) but then denied Sain's Objection as "moot". Sain objected (Doc. 01018396914) proving that the scheme was what mattered (Id. at pp. 4-5, § 8, referencing *Pasquantino*, supra) and that the Court's schemes (to prevent Sain from filing documents and evidence, using TROOPS against him, unlawfully sanctioning him) not only violated his Due Process and Equal Protection Rights under U.S.Const.Amend. IX and his Amend. I Rights to prepare and present his case, but violated 18 U.S.C. 241, 242, 1343, 1346, 1503, 1513(b)(2) and 1962.

Because the schemes have no lawful basis and are

identical in intent, similar in execution to and hand-in-glove with the ongoing and well-established routine of "the Enterprise", and because they are designed to deny Due Process to Sain which has the effect of protecting "the Enterprise" by eliminating his claims and evidence against them and because they violate Sain's Rights and the laws, the Orders by which the schemes have been carried out are unlawful, unconstitutional and void and must be thrown out.

V.

The record proves (see herein throughout and also, e. g. § 6 and FN 1, of D.N.M. Doc. 214, 10th Cir. Doc. 01018081804, pp. 197-198, (i.e. predicate acts, conspiracies, an Enterprise, racketeering, lies, deceit, fraud, false and meritless claims, violations of Plaintiff's Rights and Federal law, violations of the Rules, conscious avoidance, no evidence, and so forth; see also 10th Cir. Doc. 01018392397, throughout, esp. pp. 16-20) that Sain has ongoingly plead and otherwise proven specific predicate acts perpetrated by "the Enterprise" against him and the U.S. in protection of "the Enterprise" and has ongoingly proven that said acts are similar in intent (the unlawful denial of Sain's Rights through the elimination of his "case" at all levels of the Courts, State and Federal, and the protection of "the Enterprise") and that the Appellate Court is actively engaged in said acts. Also, the record is devoid of any proof, denials or objections that the participants in the "the Enterprise" including the Appellate

Court have not perpetrated those acts. Therefore, there being no proof in the record to the contrary, the Appellate Court is in fact an Organized Criminal Enterprise operating in conspiracy with the other identified participants of "the Enterprise" and, if the Constitution and laws of this Country are valid, they all must be held accountable for their crimes and violations of Sain's Constitutional Rights.

SUMMARY

As described above and proven by the record the 10th Circuit Court of Appeals eliminated Sain's Consolidated Appeals (1) despite the lack of proof in the record against him and, (2) after consciously avoiding and ignoring all of the evidence, proofs rules, laws, precedents and Constitutional mandates relied on by him and, (3) after consciously avoiding and ignoring his jurisdictional challenge. Despite all of that the record also proves that (4) without proof in the record the Court of Appeals also alleged that Sain's Appeals and filings with the Court were "frivolous" and "without merit" and, (5) schemed to prevent Sain from filing documents and evidence in the record and, (6) utilized ARMED GOVERNMENT TROOPS to harass, intimidate and terrorize Sain in an effort to get him to give up this case and, (7) sanctioned him $ 3000 despite the knowledge that they knew there was no proof in the record supporting such an act and that he had no means to pay such an outrageous sum (see §s 10, 27 and 34 of the referenced Doc. 01018392397) and under duress

out of fear for the loss of his liberty and his life he has paid what little he had ($35, see 10th Cir. Doc. 01018400944. Sain his family can no longer afford to continue to seek justice in these matters but others out of a sense of justice and duty to Country have scraped together what little they have to pay for the instant Petition). The sanctions violate Sain's Due Process Rights (Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but an aggravating factor., *Ryan v. Commission on Judicial Performance*, (1988) 45 Cal. 3d 518, 533).

Putting all of the above together, filing mandates, affirmances and denials and sanctioning Sain without proof or jurisdiction, scheming to prevent documents and evidence favorable to Sain from being filed, unlawfully utilizing ARMED GOVERNMENT TROOPS to cause fear and intimidation in him and unlawfully protecting "the Enterprise"'s participants from liability, it can not be denied that the 10th Circuit Court of Appeals has in bad faith schemed, utilizing the threat of physical force and massive monetary sanctions, and has completed that scheme, to defraud Appellant out of his Rights to Due Process, the Equal Protecting of the Laws, his Property Rights to his money and his Causes of Action in his Complaint and other Pleadings and his Right to seek redress through the Courts and thereby also obstructed justice in this matter violating 28 U.S.C 1503. Therefore, all of the

mandates and affirmance and denial orders issued against Sain are unlawful and unconstitutional, must be thrown out, the relief that Sain seeks in his Consolidated Appeals must be granted and, because the operation of the Constitution and laws does not suspend during litigation, all of the participants in "the Enterprise" must be held accountable for all of their violations of Sain's Rights (see *Downs v. Bidwell*, 182 U.S. 244 (1901), "It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgement in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution.") and of the laws described in the record, all of them having been admitted and there being no proof in the record disproving them.

END NOTES

End Note 1 - The "Enterprise"'s participants are the 10th Circuit Court of Appeals and the other participants described in § 11, p. 4, of Sain's APPELLANT'S MOTION FOR RECONSIDERATION AND FOR OTHER RELIEF (10th Cir. Doc. No. 01018392397).

End Note 2 - As described in §s 19, 33-35, 62.E. of the BRIEF, §s 25-29, 35-36 of the REPLY BRIEF, and §s 12-15 of Doc. 01018396914, armed and uniformed members of the Bernalillo County

Sheriff's Department (BCSD) began the potentially lethal acts of routinely guarding/falsely imprisoning Sain without cause to which he objected in every instance and when he threatened them with a lawsuit if they did not stop they merely went to defendant Lang (a judge) and had him issue a permanent (for the rest of Sain's life) Order (without charges being filed, evidence being presented or a trial being held) allowing said guarding/false imprisonment.

To no avail Sain tried various means to obtain evidence or any information at all from "the Enterprise" as to why they were attacking him so and finally had to resort to issuing a Subpoena against Lang however, defendant's Madrid and Salcedo from the NM Attorney General's Office, during a surprise and ambush hearing perpetrated by defendant Whitaker, a judge, had the subpoena quashed. As described, the matter then went before defendant's King and Richardson who not only failed to take action to stop the illegal guarding/false imprisonment/life-sentence actions but aided and abetted those perpetrating the acts and perpetuating said acts by turning a blind eye (see *Jewell*, *Ramsey*, *McPhaul*, *Chavez*, infra).

And at the Federal District Court level BCSD failed to respond to Sain's properly issued subpoena seeking information about the officers who had instituted and made permanent the illegal guarding/false imprisonment so that he could properly join them to the case. Sain then filed a Motion (see D.C. Doc. 42 and 43 (Errata), 10th Cir.

Doc. 01018081803, pp. 819-832, 890-893) seeking an Order from the Court compelling BCSD to comply with the Subpoena but judge Garcia protected BCSD by wrongfully (see §s 14-19 of D.C. Doc. 85, Doc. 01018081803, pp. 1089-1091, and § 16.D and 16.D.(1) of D.C. Doc.116, Doc. 01018081803, pp. 1297-1298, wherein Sain proved the quashing was wrong) denying the Motion, quashing the Subpoena (D.C. Doc.57, p. 978 of Doc. 01018081803) and violating Sain's I and IX Amend. Rights as well as well as twice violating both 18 U.S.C. 1503 and 1623(a). To this day Sain has no idea why he is being guarded/falsely imprisoned, harassed, intimidated and terrorized by ARMED GOVERNMENT TROOPS utilized by "the Enterprise" for the rest of his life.

End Note 3 - Richardson, a high-ranking member of the Democrat political Party, and the long-Democrat-controlled NM State Legislature, apparently have little regard for the law they enacting legislation that violates Federal law (see § 38.(E) and FN 2, pp. 49-51 of the REPLY BRIEF and §s 23-25 and FN 2, pp. 13-16, of APPELLANT'S OBJECTION TO ORDER, 10th Cir. Doc. No. 01018396914) immediately upon Richardson taking Office in 2003, crimes which, in the lower "case" were pressed by Sain but consciously avoided and ignored even though they were never denied or objected to and are thereby deemed admitted (see, *Ismail v. Cohen*, 706 F.Supp. 243, defendants' failure to deny specific allegations ... resulted in those allegations being deemed admitted.).

End Note 4 - see PLAINTIFF'S MOTION FOR RECONSIDERATION RE DOC. 176 (D.C. Doc. 183) (proving that in his Order, D.C. Doc. 176, judge Browning's violated 18 U.S.C. 3, 1343, 1346, 1503, 371, 1962, the no-evidence criterion, and Sain's Due Process and Equal Protection Rights under U.S.Const.Amend. IX); PLAINTIFF'S REPLY TO DEFENDANT KING'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION (D.C. Doc. 203); PLAINTIFF'S ERRATA SHEET RE PLAINTIFF'S REPLY TO DEFENDANT KING'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION (D.C. Doc. 209); PLAINTIFF'S MOTION FOR RELIEF FROM JUDGEMENT (D.C. Doc. 214) (proving that in his Order, D.C. Doc. 212/213, Brack perpetrated lies, deceit and fraud, violated 18 U.S.C.1503, 1343, 1346, 1962, 371, and violated Sain's Due Process, Equal Protection Rights and Jury Trial Rights (U.S.Const.Amends. IX and VII) and also proving Brack's lack of proof and conscious avoidance and ignoring of all matters favorable to Sain); D.C. Docs. 214-2 through 214-8, PLAINTIFF'S EXHIBITS 40-45 and 46 (LIES, MISREPRESENTATIONS AND OMISSIONS UTILIZED BY JUDGE BRACK IN HIS MEMORANDUM OPINION AND ORDER DISMISSING COMPLAINT (Doc. 212); D.C. Doc. 215, PLAINTIFF'S EXHIBIT 47 re the payoff of judge (defendant) Whitefield; D.C. Docs. 216-216-6, PLAINTIFF'S EXHIBITS 48-53 (Federalist Papers 79 and 81 referenced in Section III of Sain's Complaint, see 10th Cir. Doc. 01018081803, pp. 257-258); PLAINTIFF'S REPLY TO STATE

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT (D.C. Doc. 221) (proving Brack had jurisdiction to hear Sain's Rule 60. Motion and proving lack of proof and the bad faith, fraud (18 U.S.C. 1343) and Racketeering (18 U.S.C. 1962) of "the 23" (see description, p. 3, therein) and its associated Errata Sheets D.C. Docs. 222 and 223; PLAINTIFF'S OBJECTION TO ORDER DENYING MOTION FOR RECONSIDERATION (D.C. Doc. 226) (proving that in his Order, D.C. Doc. 225, Brack wilfully and intentionally defrauded Sain out of his Due Process and Equal Protection Rights and that the said Order was irregular); PLAINTIFF'S OBJECTION TO ORDER DENYING OBJECTION (D.C. Doc. 232) (in his Order, D.C. Doc. 230, Brack had no proof against Sain and utilized lies and deceit to wilfully and intentionally defraud Sain (as well as the United States) by cheating him out of his Due Process, Equal Protection Rights and Property Rights and violated 18 U.S.C. 1503, 1623(a),1343, 1346, 371); PLAINTIFF'S OBJECTION TO ORDER DENYING PLAINTIFF'S OBJECTION TO ORDER DENYING OBJECTION (D.C. Doc. 235) (proving Brack's lack of proof against Sain, his jurisdiction to hear Sain's Rule 60. Motion, consciously avoided and ignored everything favorable to Sain, Brack's Fraud utilized to cheat Sain out of his Due Process, Equal Protection and Property Rights, Brack's violations of 18 U.S.C. 1503, 1623 (a), 1343, and 1346, 371, 872, Extortion, wilful misconduct and loss of jurisdiction).

End Note 5 - see esp. FN 1, p. 12, and §s 4.-10., pp. 12-18 (immunity, conscious avoidance and ignoring

issues consciously avoided and ignored), § 11.A. and FN 4; pp. 18-19 (lying issue consciously avoided and ignored), §s 12.-14, pp. 19-21, (Sections II and III of Sain's Complaint and the Court's own records consciously avoided and ignored), §s 15-17, pp. 21-23, (proper service and waiver of improper service claims consciously avoided and ignored), §s 19-20, pp. 24-29 (twenty-four separate issues (including Racketeering and especially the Court-ordered (legal coercion), life-long ban on Sain ever seeking education and training (See e. g. the referenced Doc. 01018081803, pp. 146-173; See also the BRIEF, §s 17, p. 22 and 62.E., p. 63) to become employed at any lawful job of his choice thereby, (although the acts do not per se force Sain to work directly *for* "the Enterprise" they do, by force of Court Orders (which Sain is bound under fear of the threat of imprisonment for Contempt to comply with) from multiple Courts (from the New Mexico State District, Appellate and Supreme Courts through the Federal District Court of New Mexico and the 10th Circuit Appellate Court) ongoingly and conspiratorially set down *by* "the Enterprise" over the course of more than seven years now, condemn him to a lifetime of involuntary servitude at hard labor and low wages with no hope of escape or relief all without he having committed a crime to warrant such an outrageous (*Gurolla*, *Smith*, supra) life sentence) violating his 13th Amend. Rights and 18 U.S.C. 241, 242, and the lack of proof against Sain consciously avoided and ignored), §s 22-30, pp. 30-39 (exhaustive proof of manifest constitutional error for failing to grant Sain's Declaratory Judgement Demand consciously avoided and ignored), §s 38-66, pp. 43-68,

(exhaustive proof of Treason consciously avoided and ignored), CONCLUSION, pp. 69-70, consciously avoided and ignored)

End Note 6 - (§s 2-6, pp. 7-17 (immunity issue, the Constitution (including the separation of powers), Judicial Act of September 24, 1789, the record of the case and the lack of proof against Sain consciously avoided and ignored), §s 7-17, pp. 17-27, (all of Brant et. al's claims being frivolous, meritless, fraudulent and disproved, their lack of proof against Sain and their admittance of the violations propounded against them (including their waiver of improper service claims, the payoff of judge Whitefield, Racketeering and Treason) all consciously avoided and ignored, Judge Brack's Act Immunity Scam consciously avoided), §s 18-24, pp. 27-32 (Snyder/Stoops et. al's failure to comply with a Court Order to file separate Briefs and all of their claims being frivolous, fraudulent and disproved, their lack of proof against Sain, and their admittance of the claims against them including Treason all consciously avoided and ignored), §s 25-29, pp. 32-35 (all of BCSD's claims being void, deceptive, fraudulent, frivolous and without merit, their lack of proof against Sain and their admission of the claims against them including Treason all consciously avoided and ignored), §s 30-37, pp. 35-47 (lack of jurisdiction, waiver of improper service claims, lack of proof against Sain, false claims, all of State's et. al's claims being without merit, frivolous, invalid and fraudulent and they having admitted all of the claims against them all consciously avoided and ignored), §s 38, 47-53 (New Mexico's abrogation

of its Statehood Contract with the United States and defendant Richardson's and his fellow democrats in the State legislature's (see also FN 2, pp. 13-14 of 10th Cir. Doc. No. 01018396914, APPELLANT'S OBJECTION TO ORDER) violations of Federal Immigration and other Federal laws all consciously avoided and ignored), CONCLUSION, pp. 53-54 (lack of argument against reversing or remanding judge Brack's dismissals of Rule 60 Motion and his two related Objections and lack of jurisdiction consciously avoided and ignored).

PRAYER

Whereas, for the good grounds proven herein Petitioner does pray that the instant Petition for Writ of Certiorari be granted, that all of the Appealed Orders be thrown out as void or reversed and that the relief that Sain seeks in his Consolidated Appeals and the other documents he filed with the Appellate Court be granted. Also, because the operation of the Constitution and laws do not suspend during litigation, all of the participants in "the Enterprise" be held accountable for all of their violations of Sain's Rights and of the laws described herein and in the record, all of them having been admitted and not disproved, and for any other relief this Court finds just and fair including repayment of all costs and fees incurred by Sain for the preparation and filing of the instant Petition, and an award to Sain of punitive damages.

Respectfully submitted,

By:

Charles J. Sain, Plaintiff
10018 Inca Ct. N.E.,
Albuquerque, NM 87111,
(505) 298-1007

No.10

IN THE SUPREME COURT
OF THE UNITED STATES

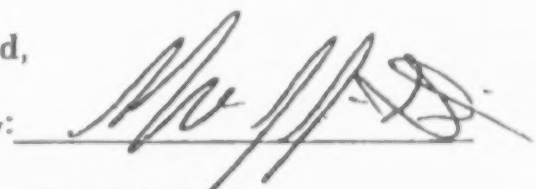
CHARLES J. SAIN,
Plaintiff,

v.

CAROLYN M. SNYDER, et al.,
Defendants.

APPENDIX I TO PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

By: 

Charles J. Sain,
Plaintiff
10018 Inca Ct. N.E.,
Albuquerque, NM 87111,
(505) 298-1007

The text of the following documents are included in this Appendix:

1) MANDATE re 09-2175 (10th Cir. Doc. No. 01018400345) filed 04/12/2010
2) MANDATE re 09-2153 (10th Cir. Doc. No. 01018400361) filed 04/12/2010
3) ORDER AND JUDGMENT* (10th Cir. Doc. No. 01018387570) filed 03/19/2010
4) ORDER TO SHOW CAUSE (10th Cir. Cons. Case No. 09-2153/09-2175, Doc. No. 9746491) filed 03/19/2010, Text-only
5) ORDER TO SHOW CAUSE (10th Cir. Cons. Case No. 09-2153/09-2175, Doc. No. 9746495) filed 03/19/2010, Text-only
6) ORDER (10th Cir. Doc. No. 01018395456) filed 04/01/2010
7) ORDER (10th Cir. Doc. No. 01018398590) filed 04/07/2010

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker Douglas E. Cressler

Clerk of Court Chief Deputy Clerk

April 12, 2010

Matthew (NMalb) Dykman
United States District Court for the District of New Mexico
Office of the Clerk
333 Lomas N.W.
Albuquerque, NM 87102

RE: 09-2175, Sain v. Snyder, et al
Dist/Ag docket: 1:08-CV-01019-RB-LFG

Dear Clerk:

Please be advised that the mandate for this case has issued today. Please file accordingly in the records of your court or agency.

Please contact this office if you have questions.

Sincerely,
Elisabeth A. Shumaker
Clerk of the Court

cc: Terri S. Beach
John M. Brant
Andrea I. Gunderson
Jane C. Levy
Charles Joseph Sain
Richard Stoops
Deborah Wells

EAS/sls

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

Douglas E. Cressler
Chief Deputy Clerk

April 12, 2010

Matthew (NMalb) Dykman
United States District Court for the District of New Mexico
Office of the Clerk
333 Lomas N.W.
Albuquerque, NM 87102

RE: 09-2153, Sain v. Snyder, et al
Dist/Ag docket: 1:08-CV-01019-RB-LFG

Dear Clerk:

Please be advised that the mandate for this case has issued today. Please file accordingly in the records of your court or agency.

Please contact this office if you have questions.

Sincerely,
Elisabeth A. Shumaker
Clerk of the Court

cc: Erika E. Anderson
Terri S. Beach
John M. Brant
Andrea I. Gunderson
Jane C. Levy
Charles Joseph Sain
Richard Stoops
Deborah Wells
Kathryn M. Wissel

EAS/jm

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CHARLES J. SAIN,
Plaintiff-Appellant,

v.

Nos. 09-2153 & 09-2175
(D.C. No. 1:08-CV-01019-RB-LFG)
(D. N.M.)
Filed 03/19/2010
Doc. No. 01018387570

CAROLYN M. SNYDER; et. al.
Defendants-Appellees.

ORDER AND JUDGMENT*

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of
(continued...)
*(...continued)
this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before KELLY, BALDOCK, and HOLMES, Circuit Judges.

Plaintiff-appellant Charles J. Sain filed this federal civil rights action claiming that his constitutional rights were violated during the course of his state-court divorce and child-custody proceedings. Exercising jurisdiction under 28 U.S.C. § 1291, we summarily AFFIRM the district court's dismissal of this action.

Specifically, in appeal No. 09-2153, we AFFIRM the dismissal of Mr. Sain's claims for substantially the same reasons set forth in the Memorandum Opinions and Orders entered by the district court on April 2 and May 13, 2009. *See* R., Docs. 176, 212. In

appeal No. 09-2175, we AFFIRM the denial of Mr. Sain's motion for relief from judgment for substantially the same reasons set forth in the Orders entered by the district court in July 2009. *Id.*, Docs. 225, 230, 233.

We also DENY: (1) Mr. Sain's motion for sanctions, filed in this court on November 18, 2009; (2) Mr. Sain's consolidated response to motions for extension of time and request for affirmative relief, filed in this court on November 18, 2009; (3) Mr. Sain's motion for teleconference, filed in this court on December 1, 2009; (4) Mr. Sain's supplemental motion for sanctions, filed in this court on December 1, 2009; (5) Mr. Sain's emergency motion for order of contempt and for further affirmative relief, filed in this court on December 11, 2009; (6) Mr. Sain's motion for refund of filing fee and for other relief, filed in this court on January 8, 2010; and (7) the request in Mr. Sain's opening brief for en banc adjudication and an award of fees and costs.

Finally, "[t]his court has the . . . inherent power to impose sanctions that are necessary to regulate the docket, promote judicial efficiency, and most importantly in this case, to deter frivolous filings." *Christensen v. Ward*, 916 F.2d 1462, 1469 (10th Cir. 1990) (citing *Van Sickle v. Holloway*, 791 F.2d 1431, 1437 (10th Cir. 1986)). Further, we have recognized that it is permissible to sanction a pro se appellant by directing him or her to make a monetary payment directly to this court. *See Christensen*, 916 F.2d at 1469 (ordering pro se appellant to show cause why sanction of $500 payment should not be imposed); *Van Sickle*, 791 F.2d at 1437 (ordering pro se appellant to show

cause why sanction of $1,500 payment should not be imposed). Accordingly, because we have determined that these appeals are frivolous, and because Mr. Sain has burdened this court with numerous motions and other filings that are likewise without any merit, we order Mr. Sain to show cause within ten days of the entry of this order and judgment why he should not be ordered to pay $3,000 to the Clerk of the United States Court of Appeals for the Tenth Circuit as a limited contribution to the United States for the cost and expenses of this action. Mr. Sain's response shall not exceed five pages. If the response is not received by the Clerk within the specified ten days, the sanction will be imposed.

The judgment entered by the district court on May 13, 2009, is AFFIRMED. Mr. Sain is ORDERED to SHOW CAUSE why he should not be sanctioned as set forth herein.

Entered for the Court
Paul J. Kelly, Jr.
Circuit Judge

Text-only Order (copied from PACER)
Filed 03/19/2010
Doc. No. 9746491

[9746491] Order filed by Judges Kelly, Baldock and Holmes denying appellant's motion for santcions, filed in this court on 11/18/09; consolidated response

to motions for extension of time and request for affirmative relief, filed in th court on 11/18/09 ; Motion for teleconference, filed in the court on 12/1/09; Supplemental motion for santcions, filed on 12/1/09; emergency motion for order of contempt and for further affirmative relief, filed in this court 12/11/09; motion for refund of filing fee and for other relief, filed on 1/8/10; and the request in Mr. Sain's opening brief for en banc adjudication and an award of fees and costs. Mr Sain has burdened this court with numerous motions and other filings that are likewise without any merit, we order Mr. Sain to show cause within ten days of the entry of this Order and judgment why he should not be ordered to pay $3,000 to the Clerk of the United States Court of Appeals for the Tenth Circuit as a limited contribution to the United States for the cost and expenses of this action. Response shall not exceed five pages. Response is due 3/29/10. If the response is not received by the Clerk within the specified ten days, the sanction will be imposed. Text only entry see order and judgment. [09-2153, 09-2175]

Text-only Order (copied from PACER)
Filed 03/19/2010
Doc. No. 9746495

[9746495] Order filed by Judges Kelly, Baldock and Holmes Mr. Sain is ordered to show cause why he should not be sanctionsed. Response due 3/29/2010

for Charles Joseph Sain. Text only entry to create the deadline for the response. [09-2153, 09-2175]

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CHARLES J. SAIN,
Plaintiff-Appellant,

v.

Nos. 09-2153 & 09-2175
Filed 04/01/2010
Doc. No. 01018395456

CAROLYN M. SNYDER; et. al.
Defendants-Appellees.

ORDER

Before KELLY, BALDOCK, and HOLMES, Circuit Judges.

This matter comes before the court on appellant's motion for reconsideration, which this court has docketed and will treat as a petition for rehearing, and appellant's response to the show cause order entered by this court on March 19, 2010. Appellant's petition for rehearing is DENIED. Upon consideration of appellant's response to the show cause order, appellant is ORDERED to pay $3,000 to the Clerk of the United States Court of Appeals for the Tenth Circuit within ten days of the entry of this

order. Because the exhibits that appellant submitted in support of his petition for rehearing have been filed in this court on this same date, appellant's "Objection to Refusal to Enter Evidence" is DENIED as moot.

Entered for the Court,
ELISABETH A. SHUMAKER, Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CHARLES J. SAIN,
Plaintiff-Appellant,

v.

Nos. 09-2153 & 09-2175
Filed 04/07/2010
Doc. No. 01018398590

CAROLYN M. SNYDER; et. al.
Defendants!Appellees.

ORDER

Before KELLY, BALDOCK, and HOLMES, Circuit Judges.

This matter comes before the court on appellant's emergency petition for stay and objection to order, both filed with this court on April 5, 2010. Appellant's emergency petition and objection are

DENIED.

Entered for the Court,
Elisabeth A. Shumaker, Clerk

No.10

IN THE SUPREME COURT
OF THE UNITED STATES

CHARLES J. SAIN,
Plaintiff,

v.

CAROLYN M. SNYDER, et al.,
Defendants.

APPENDIX II TO PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

By: _____

Charles J. Sain,
Plaintiff
10018 Inca Ct. N.E.,
Albuquerque, NM 87111,
(505) 298-1007

Plaintiff's letter reply and objection to the Clerk's letter to him as well as the text of the Clerks Letter and the following documents are included in this Appendix:

1) MEMORANDUM OPINION AND ORDER (D.N.M. Doc. No. 176) Filed 04/02/2009
2) MEMORANDUM OPINION AND ORDER (D.N.M. Doc. No. 212) Filed 05/13/2009
3) ORDER DENYING MOTION FOR RECONSIDERATION (D.N.M. Doc. No. 225) Filed 07/17/2009
4) ORDER DENYING OBJECTION (D.N.M. Doc. No. 230) Filed 07/27/2009
5) ORDER DENYING PLAINTIFF'S OBJECTION TO ORDER DENYING OBJECTION (D.N.M. Doc. No. 233) Filed 07/29/2009

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

April 21, 2010

Charles J. Sain
10018 Inca Ct., N.E.
Albuquerque, NM 87111

RE: Sain v. Snyder

Dear Mr. Sain,

Returned are 39 copies of an appendix for a petition for a writ of certiorari in the above-titled case postmarked on April 14, 2010 and received on April 20, 2010, which fails to comply with the Rules of this Court.

The appendix to the petition as required by Rule 14 must be in booklet format and on paper that measures 6 1/8 by 9 1/4 inches. Rule 33.1(a).

The order(s) of the United States District Court of New Mexico filed May 13, 2009 and April 02, 2009 (1:08-CV-01019) must be included in the appendix. Rule 14.1(i). Each order must be reproduced so that it complies with Rule 33.1.

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

Sincerely,
William K. Suter, Clerk
By:

S. Elliott
(202) 479-3025

Enclosures

To: SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

Fm: Charles J. Sain
Plaintiff
10018 Inca Ct. N.E.
Albuquerque, NM 87111

April 26, 2010

Dear esteemed Clerk of the Court

I am in receipt of your postal letter sent to me and dated April 21, 2010 (copy Attached).

In ¶ 3 of the letter your offices correctly required me under Rule 14.1.(i) to include in an appendix to my Petition two orders from the District Court. I confirmed the requirement by telephonic communication with Jeff Atkins (April 22, 2010) and Ms. Elliott (April 23, 2010) in the Clerk's office.

The two orders are D.N.M. Doc. Nos. 212 and 176

(see ¶ 2, p. 2, of ORDER AND JUDGMENT*, 10th Cir. Doc. No. 01018387570). Doc. 176 was an interlocutory order dismissing defendant King and Doc. 212 was a final order.

However, as I, representing myself Pro Se, have also discovered, Rule 14.1.(iii) requires that copies of "any order on rehearing" must also be included in the appendix but the your offices did not require any such orders to be filed even though the Appellate Court, along with the other two referenced orders, referenced three such orders in its Order those being "Docs. 225, 230, 233.".

The three omitted orders deal with the Rule 60.b. Motion I filed (see D.N.M. Doc. Nos. 214, 214-2 through 214-8 (Plaintiff's Exhibits 40-46), 215, 217, 221, 222, 223, 226, 227, 228, 232, 235, 236, 237; see also 10th Cir. Doc. No. 01018344496 regarding the ten day rule) in the District Court wherein I proved not only that, contrary to judge Brack's claims, that he did in fact have jurisdiction to rule on the Rule 60 Motion (see p. 13-14 of the Petition) but a legion of violations of my Rights and of the law perpetrated by judges Brack, Browning and Garcia and that there was no basis for the "case" and the defendants to be dismissed (just one of "twenty-four separate issues" identified in §s 19-20 of his BRIEF (10th Cir. Doc. 01018275505) that were consciously avoided and ignored by the Appellate Court (see esp. § 19.(2), p. 17-18, therein stating

"The unconstitutional and illegal denial of Appellant's Rule 60.b. Motion despite the fact that

no argument or authority opposing and invalidating the arguments and authorities Appellant presented therein (matters that, since they were never denied, are deemed admitted (*Ismail*, supra)) was ever presented and despite the fact that Brack's Denial Order (as well as his Orders denying Appellant's Objections) are entirely invalid and violate not only Appellant's Rights but Federal law (see D.C. Docs 214, 214-8, 221-223, 226, 232, 235-237)"

(see End note 5, pp. 35-36 of the Petition) and the CONCLUSION, p. 53, of the REPLY stating "Additionally, none of the Appellees argue against Brack's dismissals of Appellant's Rule 60 Motion and his two related Objections being reversed or remanded thereby agreeing to do so." that Plaintiff identified as consciously avoided and ignored by the Appellate Court (see End note 6, p. 37, of the Petition)).

Throughout 10th Cir. Doc. 01018344496 (APPELLANT'S MOTION FOR REFUND OF FILING FEE AND FOR OTHER RELIEF) I clearly identified and predicted the illegal and unconstitutional intent of "the Enterprise" to ensure the elimination of the "case" by Brack first concocting a labyrinthine order "of such length and complexity and packed so full of lies, deceit, and fraud and omitted and misrepresented material facts that Appellant could not possibly respond within ten days" (see § 16, p. 7, of the referenced MOTION FOR REFUND OF FILING FEE AND FOR OTHER RELIEF) ("no man can be obliged to perform an impossibility.", *Jones v United States*, 96 US 24) and

then when I did file a motion seeking relief from the bogus order it could simply be denied as not timely under the ten day rule, then bifurcating his Rule 60. Motion from the rest of the "case" by not allowing me to amend my Notice of Appeal to include the denial in the original Notice thereby forcing me to unnecessarily file (and pay for) a second Appeal, and then eliminating the Motion and its associated Objections by means of the ten day rule thereby allowing the corrupt, unconstitutional and illegal dismissal of the "case" and the defendants to stand.

I proved therein the unconstitutionality of the ten day rule and there is no proof in the record proving it is not, but, in keeping with the ongoing conspiratorial routine of "the Enterprise", the matter was just consciously avoided and ignored by the Appellate Court (see my Petition (FN1), pp. 13-14)

FN1 As authorized by Sandy (sp.) in your offices during my telephonic communications of April 19, 2010, and April 23, 2010, I am this day sending in a separate mailing a corrected version of my Brief along with included Appendices and in the same format as my prior, uncorrected version that your offices received on April 20, 2010, which Sandy confirmed was acceptable.

thereby corruptly, unconstitutionally and otherwise illegally allowing the "case" the Rule 60. Motion and its associated Objections to all be swept under the rug (so to speak) along with all of the evidence, proofs, authorities, arguments, and constitutional mandates relied on by me in my defense. In so doing the Appellate Court has clearly signaled that the Constitution and laws do not apply to "the

Enterprise"'s participants and that their lawlessness, not my Rights, is what is protected in the 10th Circuit.

On information and belief I have become aware that the referenced judge Browning prior worked in the Supreme Court Clerk's office and as the record proves, Browning, in conspiracy with Brack, consciously avoided and ignored all of the evidence, the Rules, more than two-hundred years worth of precedent supporting Sain's Sections II and III of his Complaint (D.N.M. Doc. 1), additional precedent, the U.S. Constitution and the laws in order to protect his buddies against liability (see D.N.M. Docs. 178, 178-2, 179, 180, 183, 197, 197-2 through 197-7, 198; see also End Note 4 of the Petition, pp. 33-35) by dismissing them without proof (see D.N.M. Docs. 175, 176 and 212).

Based on Browning's protection of his cronies, the ongoing conspiracy of "the Enterprise" to protect all of its participants as described throughout the documents I have filed throughout the seven-year pendency of the "case" (see especially Brack's Act Immunity Scam (pp. 12-13 of the Petition) protecting Garcia from liability for his illegal protective acts (see D.N.M. Doc. 116, throughout), the failure of the Appellate Court to hold Snyder/Stoops in Contempt for violating a Court Order (see pp. 16-17 of the Petition), and the failure of all levels of the Courts to take action against "the Enterprise for their ongoing bad faith, lying to obtain favorable rulings, and fraud especially the Appellate Court's failure to take action against those proven to be perpetrating lies in

two separate cases (see pp. 14-16 of the Petition)) and the undeniable proof in the record that the entire Rule 60. Motion matter was unlawfully eliminated thereby protecting Brack, eliminating my Rights and protecting "the Enterprise", it is reasonable to presume ("since one fact may gain color from others." See *United States v. Tramunti*, 500 F.2d 1334,1338 (2d Cir.), cert. denied, 419 U.S. 1079, 95 S.Ct. 667, 42 L.Ed.2d 673 (1974)) that a prudent man would have probable cause ("In dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175, 69 S.Ct. 1302, 1310) to believe that Browning would still have "friends" in the Clerk's Office (or so might any other of "the Enterprise"'s participants by reason of their long membership in the "legal" profession) that might not hesitate to protect him (them) by scheming to direct this Court's attention away from any matters favorable to me such as the Rule 60 Motion matter.

Unfortunately, the circumstances ("The nature of the offense of conspiracy with its attendant aspects of secrecy often requires that elements of the crime be established by circumstantial evidence."., *U.S. v. Evans*, 970 F.2d 663, C.A.10 (Okl.),1992.) of the prior acts to eliminate everything associated with my Rule 60 Motion and the Clerk's office apparently selectively excluding the three rehearing orders all dealing with the Rule 60. matter might tend to indicate that it could also be, however unlikely one

might want to believe it to be, the intent of persons in the Clerk's office to perpetuate the conscious avoidance and ignoring of the Rule 60 Motion matter.

I have a U.S.Const.Amend I Right to seek redress of grievances through the Courts ("The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.", ""it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."", *Marbury v. Madison*, 1 Cranch 137, 163, 1803 WL 893, U.S.Dist.Col.,1803) on all questions of fact and law regarding the enforcement of my Constitutional Rights ("In cases brought to enforce constitutional rights, the judicial power ... necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function." *Crowell v. Benson*, 285 U.S. 22, 60 (1932)) but the selectivity of the Clerk's office might be construed to be working against that Right and would thereby also indicate a bias, for whatever reason, against me thereby together being violative of my Due Process and Equal Protection Rights under U.S.Const.Amend IX.

Additionally, as a result of being victimized now for more than seven years by "the Enterprise" I have become familiar with their tactic of misdirection to falsely make me appear to be at fault but in this

instance, even though I can file the text of the three selectively ignored orders under Rule 14.1.(vi) (any other material the petitioner believes essential to understand the petition.) that allowance does not provide a misdirection escape for them to claim, say that, my claim "is moot and frivolous and without merit because I can file the orders under Rule 14.1.(vi)" because, as described on p. 27, of the Petition (referencing *Pasquantino v. U.S.*, 544 U.S. 349), it is the scheme that matters and the circumstances could lead that prudent man to have probable cause to believe that a scheme to misdirect the Court away from the Rule 60 motion matter has already been initiated and is hand-in-glove with the prior acts that resulted in the unconstitutional and otherwise illegal elimination of my "case" and Rule 60. Motion and its associated Objections. As such, I must reluctantly Object to the selective ignoring and avoiding of the three orders as potentially violative of my Due Process and Equal Protection Rights under U.S.Const.Amend IX.

I have a Right for all matters regarding my Petition to be decided fairly and without bias will comply with the Clerk's directions regarding the inclusion of the text of the two selected orders but will not waive my Rights to any matter. As such and at additional expense, I must also include in the same appendix (Appendix II) the text of the three avoided and ignored orders. In doing so I also have the constitutional Right to expect that the evidence, arguments and authorities I relied upon in the documents I has filed into the record below will not be consciously avoided and ignored by this Court.

The fact that I have not filed those documents in an appendix to my Petition under Rule 14.1.(vi) or any other Rule is not an indication that I do not feel that they are not essential to a just and complete adjudication of my Petition, they most assuredly are, but reflects the fact that I just can not afford the enormous cost it would entail to do so. Also, during the referenced telephonic communication of April 23, 2010, between me and your offices I especially expressed my concern about the cost of reproducing and filing the text of the lengthy Doc. 212 because it was already a part of the record and could be referenced there but was told that I had to file it anyway.

The preamble to the Constitution says "We the People" not "We the People that can afford to buy justice". I hope that the scales of justice will not be imbalanced against me by the facts that I am representing myself Pro Se and am impoverished, the Constitution is not supposed to work that way.

Finally, I have reviewed the Rules and could find no procedure therein for responding or objecting in the record to new matters (except for possibly Rule 25 which allows new matters to be filed) to a direction from the Clerk therefore, because you have correctly directed me to the rule that requires all documents I file with this Court to be in the booklet format, I am including a copy of the text of your office's letter and this letter in Appendix II to my Petition along with the text of the five orders.

I respect your authority in this matter and hope

that if there are any matters that might still need to be resolved you will not hesitate to contact me so that we may work together to resolve them as quickly (and inexpensively) as possible.

Sincerely,

Charles J. Sain
Plaintiff
10018 Inca Ct. N.E.
Albuquerque, NM 87111
(505) 298-1007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHARLES J. SAIN,
Plaintiff,

vs.

No. CIV 08-1019 JB/LFG
Filed 04/02/2009
Doc. No. 176

CAROLYN M. SNYDER, et. al.
Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING GARY KING'S MOTION TO DISMISS

THIS MATTER comes before the Court on Defendant Gary King's Motion to Dismiss, filed

November 21, 2008 (Doc. 53). The Court has carefully considered the motion, response, and reply; the Court does not need or require oral argument. The primary issue is whether all of Plaintiff Charles J. Sain's claims against Defendant Gary King, the Attorney General of the State of New Mexico, are barred because of qualified immunity and because of King's lack of personal participation. Because the Court concludes that King did not personally participate in any violation of Sain's constitutional rights, the Court will grant King's motion.

PROCEDURAL BACKGROUND

Sain brings an action for damages and injunctive relief as a result of his dissatisfaction with the outcome of a domestic relations case in state court in which he was the respondent. He contends he was a victim of "one of the most chilling episodes of premeditated judicial and prosecutorial misconduct and corruption in modern American history." Civil Complaint ¶ 1, at 7, filed October 31, 2008 (Doc. 1)("Complaint"). He asserts that the underlying state court litigation resulted in his being "dragged against his will into the grips of the Organized Criminal Enterprise that runs and controls with absolute corruption, brutality and tyranny the Courts of the State of New Mexico." Id. at 8.

Specifically, his allegations against King revolve around the Attorney General's failure to respond to requests for assistance. Sain contends: "After . . . finding no relief or redress at any level of Government within the State of New Mexico, Plaintiff . . . applied for Asylum, on March 31, 2008, with the Government of the United States through

U.S. congressional representative heather [sic] Wilson's office." Complaint ¶¶ 517, 518, at 160. Sain asserts that Wilson responded to his request by referring the matter to King, stating: "I have asked Mr. King to give your situation careful attention and to address your concerns. I asked Mr. King to review the information you provided and respond to you directly." Complaint, ¶ 519, at 160.

Sain asserts that, notwithstanding his own earlier inquiry to the office of the Attorney General and Wilson's referral, two months elapsed, and King did not respond. No other alleged violations of law are noted concerning King.

King seeks dismissal of the claim noting, among other things, that Sain's Complaint fails to state a cause of action under 42 U.S.C. § 1983. For reasons hereafter stated, the Court agrees.

42 U.S.C. § 1983

Sain brings his claim against King under 42 U.S.C. § 1983. To sustain an actionable claim under this statute, a plaintiff must allege and prove that a defendant violated a federally protected right while acting under color of state law. See Gomez v. Toledo, 446 U.S. 635, 640 (1980).

In this case, King correctly notes that there is no constitutional or statutory right to demand and receive intercession by a state attorney general in a situation such as the one in which Sain apparently found himself. There is no Supreme Court, Tenth Circuit or other circuit court opinion requiring that an attorney general respond to a citizen's complaint, or, indeed, to an inquiry by a congressperson's constituent-service office. Thus, the failure to

respond, even if true, does not constitute a violation of Sain's federally protected rights.

Sain also alleges that King conspired with several other Defendants in this case to violate Sain's rights. In support of this contention, however, Sain musters only vague and conclusory allegations about King's involvement in this alleged conspiracy. Vague and conclusory allegations are insufficient, particularly regarding conspiracy claims against public officials. Under Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955 (2007), a complaint must contain enough allegations of fact "to raise a right to relief above the speculative level." Id. at 1965. [C]omplaints in § 1983 cases against individual government actors pose a greater likelihood of failures in notice and plausibility because they typically include complex claims against multiple defendants. The *Twombly* standard may have greater bite in such contexts, appropriately reflecting the special interest in resolving the affirmative defense of qualified immunity at the earliest possible stage of a litigation. Robbins v. Oklahoma, 519 F.3d 1242, 1248 (10th Cir. 2008). "The *Twombly* Court was particularly critical of complaints that 'mentioned no specific time, place, or person involved in the alleged conspiracies." Robbins v. Oklahoma, 519 F.3d at 1248 (quoting Bell Atl. Corp. v. Twombly, 127 S. Ct. at 1971 n.10). Sain's Complaint mentions names, but gives little more than bare allegations that the named Defendants "did conspire to and did carry out a policy of terrorizing, endangering and humiliating" Sain. Complaint ¶ 524, at 162. A complaint containing "nothing more than conclusory allegations that a civil conspiracy exists . . . is not

enough to satisfy the requirement of "'concerted action.'" Native American Distributing v. Seneca-Cayuga Tobacco Co., 546 F.3d 1288, 1298 (10th Cir. 2008)(citing Bell Atl. Corp. v. Twombly, 127 S. Ct. at 1965). Even before Bell Atl. Corp. v. Twombly, the United States Court of Appeals for the Tenth Circuit explained that "[c]onclusory allegations of conspiracy are insufficient to state a valid § 1983 claim." Durre v. Dempsey, 869 F.2d 543, 545 (10th Cir. 1989) (defining a "conclusory allegation" of conspiracy as one that fails "to allege specific facts showing agreement and concerted action among defendants"). Sain's allegations about King's being involved a conspiracy against him are deficient under the Twombly standard. Moreover, Sain has failed to show that King personally participated in any actions against Sain. Individuals cannot be held liable under § 1983 without a showing of personal involvement. See Foote v. Spiegel, 118 F.3d 1416, 1423 (10th Cir. 1997).

Having found that Sain failed to establish the first prong requisite to state a 42 U.S.C. § 1983 claim, the Court determines that, even though Sain asserted nearly 600 separate paragraphs or allegations in his Complaint, he fails to demonstrate that the Attorney General violated his federally protected rights. For this reason, the Court grants Defendant Gary King's Motion to Dismiss. Dismissals for failure to state a claim under Fed. R. Civ. P. 12(b)(6) are usually without prejudice. The Court notes, however, that this action is brought against the Attorney General in both an official and personal capacity. An "official capacity" claim is the equivalent of a claim against the state, and because

claims against the state, for monetary damages, may not be brought in a federal forum under a state's Eleventh Amendment immunity, allowing Sain to amend his Complaint to bring monetary claims against King in his official capacity would be futile. Will v. Michigan Dep't of State Police, 491 U.S. 58, 63 (1989).

To the extent there are official capacity complaints against Defendant King, they are dismissed with prejudice, and to the extent Sain believes he can plead an actionable cause against the Attorney General in a personal capacity, that complaint is dismissed without prejudice.

By virtue of the Court's dismissal, the Court need not consider the remainder of Attorney General's Motion to Dismiss.

IT IS ORDERED Defendant Gary King's Motion to Dismiss is granted for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

James O. Browning
UNITED STATES DISTRICT JUDGE

Parties and counsel:

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Plaintiff pro se

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHARLES J. SAIN,
Plaintiff,

vs.

No. CIV 08-1019 RB/LFG
Filed 05/13/2009
D.N.M. Doc. No. 212

CAROLYN M. SNYDER, et. al.
Defendants.

MEMORANDUM OPINION AND ORDER
DISMISSING COMPLAINT

THIS MATTER comes before the Court on: Defendant Carolyn Snyder's Motion to Dismiss, filed November 19, 2008 (Doc. 49); Defendant Bill Richardson's Motion to Set Aside Default, filed December 2, 2008 (Doc. 70); Plaintiff Charles J. Sain's Motion to Amend/Correct, filed December 18, 2008 (Doc. 85); Sain's Motion to Amend/Correct, filed January 15, 2009 (Doc. 116); Defendants A. Joseph Alarid's, Richard C. Bosson's, Michael Bustamante's, Edward L. Chavez's, Charles W. Daniels, Roderick Kennedy's, Petra Jimenez Maes', Lynn Pickard's, Ernesto J. Romero's, Patricio M. Serna's, Michael Vigil's, Deborah Davis Walker's, James J. Wechsler's, and Stanley Whitaker's Motion to Dismiss, filed February 18, 2009 (Doc.

151); Defendants Patricia Madrid's and Betsy Salcedo's Motion to Dismiss, filed February 18, 2009 (Doc. 152); Defendants Juanita Duran's and William F. Lang's Motion to Dismiss, filed February 18, 2009 (Doc. 153); Defendants JoAnne DeHerrera and Vicki Aikenhead Ruiz's Motion to Dismiss, filed February 18, 2009 (Doc. 154); and Defendant Richardson's Motion to Dismiss, filed March 17, 2009 (Doc. 165). Having considered the submissions of the parties and the relevant law, and being otherwise fully advised, the Court concludes that the Motions to Amend the Complaint should be denied, that Snyder's and Richardson's motions should be granted, and that the Complaint, with its amendment/supplement, must be dismissed.

I. Background.

This case arises out of a lengthy and bitter divorce and child-custody suit that Sain's former wife, Defendant Snyder, filed in 2003 in the Second Judicial District Court, Bernalillo County, State of New Mexico. *See* Complaint (Doc.1) at ¶ 33. The divorce was extremely contentious, with Sain accusing Snyder of adultery and of lying to the Court about her income and assets, and of violating the state-court's interim orders. *See id.* & ¶¶ 42-44. Sain represented himself during the majority of the divorce proceedings. *See id.* at ¶ 55. At one point, Sain was arrested at a hearing, after being given an opportunity to testify, for his admitted failure to obey the state-court's order regarding payment of child support. Sain complains that he had not been given prior notice that the presiding judge, Defendant Ernest Romero, was going to rule on

Snyder's "emergency" motion for contempt of court for failure to pay child support on the same day Snyder and her lawyer, Defendant Mary E. Chappelle, had filed the "emergency" motion. *See id.* at ¶¶ 78-84. Sain contends that Judge Romero also later improperly issued a restraining order against him, without receiving sufficient admissible evidence, on Chappelle's claim that Sain had threatened her, *see id.* at ¶¶ 112-120; and

1 "The Fourteenth Amendment applies to the States those specific rights contained in the first eight amendments of the Constitution which declare fundamental personal rights. In addition, the Fourteenth Amendment that both the recorded transcript and the written record in the divorce case regarding that event had been "tampered with" and portions of the transcript were deleted and exhibits were not placed in the record. *See id.* at ¶¶ 121-131. Sain complains that Chief Judge Lang improperly issued an order requiring Sain to be accompanied by court security whenever he appeared at the courthouse for hearings, which allegedly placed his life in jeopardy. *See id.* at ¶¶ 503-06.

During the pendency of the divorce and custody case, state district-court judges Romero, Whitaker, and Walker all made rulings with which Sain disagreed. He appealed a number of those rulings to the New Mexico Court of Appeals and the New Mexico Supreme Court, and Sain now also sues the Defendant Judges Pickard, Wechsler, Vigil, Bustamante, Alarid, and Kennedy, and Defendant Justices Chavez, Serna, Maes, Bosson, and Daniels because of their rulings in those appeals, contending

that the fact that he repeatedly lost in the state-court proceedings proves that there is an "Organized Criminal Enterprise that runs and controls with absolute corruption, brutality and tyranny the Courts of the State of New Mexico." Complaint at ¶ 1. Sain alleges that, throughout the course of the state-court proceedings he was "viciously and maliciously and illegally brutalized, terrorized and abused . . ." by individuals "operating under color of law within the New Mexico Second Judicial District Court, the New Mexico Appellate Court, [and] the New Mexico Supreme Court . . ." *Id.* at ¶ 34.

Sain's 256-page Complaint and eighteen-page Errata amending and supplementing his Complaint attempts to set forth thirty-nine causes of action against twenty-eight Defendants, all alleging that they violated his civil rights under 42 U.S.C. §§1981, 1982, 1983 and 1985, by violating the First, Ninth1, and Fourteenth Amendments. *See* Doc. 1; Doc. 29 at 6. He seeks both compensatory damages and injunctive relief.

Sain's request for injunctive relief is directed at protecting unnamed New Mexico citizens from "irreparable injury" by the New Mexico courts in future litigation, and he seeks to accomplish this protection by the appointment of an omnipotent, federally-appointed monitor who will oversee the New Mexico courts, the attorney general, and the executives of the State, and establish, review, and enforce "all policies" related to the three branches of government. *See* Doc. 29 at 16. Under Sain's plan, the monitor would have the power to hire, fire, and promote all State officials, including the Governor, and could establish his or her own eleven-member

Government Review Commission that would hear public complaints about government-employee misconduct and decide the discipline and/or innocence of the accused. *See id.*

II. Legal Standards.

A. Motions to dismiss.

A complaint does not require "detailed factual allegations," but the "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (internal quotation marks and bracket omitted). A complaint must contain enough allegations of fact "to state a claim to relief that is plausible on its face." *Id.* at 1974. In resolving a motion to dismiss brought under rule 12(b)(6), the court must determine whether the factual allegations are sufficient "to raise a right to relief above the speculative level," while assuming "that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* at 1965 encompasses and applies to the States those pre-existing fundamental rights recognized by the Ninth Amendment, which provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" *Wise v. Bravo*, 666 F.2d 1328, 1332 (10th Cir. 1981). (internal quotation marks omitted).

"[P]lausibility" in this context must refer to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of

conduct, much of it innocent, then the plaintiffs "have not nudged their claims across the line from conceivable to plausible." [*Bell Atl. Corp. v. Twombly*, 127 S Ct.] at 1974. The allegations must be enough that, if assumed to be true, the plaintiff plausibly (not just speculatively) has a claim for relief. *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008).

This requirement of plausibility serves not only to weed out claims that do not (in the absence of additional allegations) have a reasonable prospect of success, but also to inform the defendants of the actual grounds of the claim against them. "Without some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." [*Bell Atl. Corp. v. Twombly*, 127 S. Ct.] at 1965 n. 3. *See Airborne Beepers & Video, Inc. v. AT & T Mobility L.L.C.*, 499 F.3d 663, 667 (7th Cir. 2007) ("[A]t some point the factual detail in a complaint may be so sketchy that the complaint does not provide the type of notice of the claim to which the defendant is entitled under Rule 8."). The *Twombly* Court was particularly critical of complaints that "mentioned no specific time, place, or person involved in the alleged conspiracies." 127 S. Ct. at 1971 n. 10. Given such a complaint, "a defendant seeking to respond to plaintiffs' conclusory allegations . . . would have little idea where to begin." *Id.*

Id. at 1248. Complaints in § 1983 actions subject to

> qualified-or-absolute immunity defenses must allege facts sufficient to show (assuming they are true) that the defendants plausibly violated the [plaintiff's] constitutional rights, and that those rights were clearly established at the time. This requires enough allegations to give the defendants notice of the theory under which their claim is made.
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> * * * *
>
> [C]omplaints in § 1983 cases against individual government actors pose a greater likelihood of failures in notice and plausibility because they typically include complex claims against multiple defendants. The *Twombly* standard may have greater bite in such contexts, appropriately reflecting the special interest in resolving the affirmative defense of qualified immunity at the earliest possible stage of a litigation. Without allegations sufficient to make clear the "grounds" on which the plaintiff is entitled to relief, *Twombly*, 127 S. Ct. at 1965 n. 3, it would be impossible for the court to perform its function of determining, at an early stage in the litigation, whether the asserted claim is clearly established. *Id.* at 1249 (internal quotation marks and citations omitted). Thus, "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based," even in a complaint prepared by a pro se plaintiff. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

B. The *Rooker-Feldman* doctrine.

The *Rooker-Feldman* doctrine prevents federal

district courts from assuming jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *Guttman v. Khalsa*, 446 F .3d 1027, 1032 (10th Cir. 2006) (noting that the *Rooker-Feldman* doctrine applies only to "suits filed after state proceedings are final" and setting out what events may indicate such finality). Even when the plaintiff does not request that the federal court overturn the state-court judgments, federal courts do not have subject-matter jurisdiction over § 1983 claims that effectively seek appellate review of the state-court divorce or child custody determinations. *See Roman-Nose v. N.M. Dep't of Human Servs.*, 967 F.2d 435, 437 (10th Cir. 1992) (holding that dismissal of federal suit seeking damages in regard to state-court judgment terminating parental rights was proper "to the extent that Plaintiff's allegations can be construed as seeking redress for constitutional infirmities in the [state-court] proceeding under 42 U.S.C. § 1983"). Thus, plaintiffs are generally barred "from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994). Instead, review of the state-court judgment and the underlying rulings must proceed to the state's highest court and then to the United States Supreme Court pursuant to 28 U.S.C. § 1257.

Further, the *Rooker-Feldman* doctrine bars consideration of constitutional claims that are "inextricably intertwined" with the state-court judgment because the district court, "in essence, is being called upon to review the state-court decision." *D. C. Court of Appeals v. Feldman,* 460 U.S. 462, 483 n. 16 (1983). A "federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment." *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

III. Analysis.

A. Sain lacks standing to request injunctive relief on behalf of future litigants.

The Article III standing requirement inherent in every cause of action brought in federal court "requires that a plaintiff establish injury-in-fact, causation and redressability." *Finstuen v. Crutcher,* 496 F.3d 1139, 1143 (10th Cir. 2007) "[T]he court *sua sponte* [] can raise the issue of standing for the first time at any stage of the litigation . . . ." *New England Health Care Employees Pension Fund v. Woodruff,* 512 F.3d 1283, 1288 (10th Cir. 2008). That is true because "[t]he federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of the jurisdictional doctrines." *FW/PBS, Inc., v. City of Dallas,* 493 U.S. 215, 230-31 (1990)

(internal quotation marks and bracket omitted), *holding modified on other grounds by City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774, 781-82 (2004). To establish standing, the "complainant must allege an injury *to himself* that is 'distinct and palpable,' as opposed to merely 'abstract,' and the alleged harm must be actual or imminent, not 'conjectural' or 'hypothetical.'" *Finstuen*, 496 F.3d at 1143 (internal quotation marks omitted, italics added). "In a plea for injunctive relief, a plaintiff cannot maintain standing by asserting an injury based merely on 'subjective apprehensions' that the defendant might act unlawfully." *Id.* at 1144. And "[e]ach plaintiff must have standing to seek each form of relief in each claim." *Bronson v. Swensen*, 500 F.3d 1099, 1106 (10th Cir. 2007).

Sain's divorce and custody proceedings in the district court are over, and his request for injunctive relief is directed at protecting unnamed New Mexico citizens from "irreparable injury" by the New Mexico courts if they should fail to follow the law in the future. His request for injunctive relief, therefore not only does not seek to remedy a future harm to *himself*, but it also is not based on anything more than his subjective apprehension that the New Mexico courts may act unlawfully in the future. Sain has not established standing to pursue the injunctive relief he requests, *see Finstuen*, 496 F.3d at 1143-44, and his claims for injunctive relief will be dismissed for lack of subject-matter jurisdiction.

B. The Court lacks subject-matter jurisdiction over Sain's claims for damages arising from allegedly erroneous state-court rulings.

Sain's claims against the state-court judges and state employees, his ex-wife, and her attorneys, all arise out of the "damage" he purportedly suffered arising from what he alleges was fraudulent behavior on behalf of Snyder and her lawyers during the support and custody hearings that the state courts refused to rectify to his satisfaction, and from what he perceives as erroneous or unlawful rulings or alleged refusals to rule on his various motions. *See, e.g.* Complaint at 14-17 (Counts 1 & 2 - alleging that Judge Romero is liable to Sain under § 1983 for failing to "Act Against Snyder for violating the TRD and for Hiding Funds in violation of a Court Order" because he arrested and incarcerated Sain for violating a court order but only required Snyder to reimburse Sain for money she should have paid to him under interim orders instead of similarly holding her in contempt); *id.* at 21-22 (Counts 3 & 4 - alleging that Judge Romero is liable under § 1983 for failing to hear Sain's Rule 60(B) motion before entering the divorce decree); *id.* at 25-27 (Count 5 - alleging that Judge Romero, Snyder, and Chappelle are liable under § 1983 for a "no-Notice attack" on Sain because he wasn't given prior notice that Judge Romero was going to hear Snyder's "Emergency Motion re Failure to Pay Child Support" on the same day that the Judge was going to hear some of Sain's various motions, and which resulted in Sain's arrest after he testified that he had not obeyed the Court's order); *id.* at 27-29 (Count 6 - alleging that Romero is liable under § 1983 for tampering with evidence in violation of New Mexico law because the recorded transcript did not contain the segments of the hearing showing that Judge Romero decided to hear

Snyder's Emergency Motion on his own initiative, over Sain's objection); *id.* at 29-30 (Count 7 - alleging that Judge Romero, Snyder, and Chappelle are liable under § 1983 for conspiring to tamper with the record); *id.* at 30-42 (Count 8 - alleging that Judge Romero, Snyder, and Chappelle are liable under § 1983 because Romero issued a restraining order prohibiting Sain from coming within 100 feet of Chappelle's office without a written motion, and without sufficient evidence or sufficient prior notice to Sain of the hearing in which he participated); *id.* at 42-43 (Count 9 - alleging that Romero, Snyder and Chappelle are liable under § 1983 for tampering with the transcript and exhibits reflecting the hearing held on the oral motion for a restraining order); *id.* at 44 (Count 10 - alleging that Romero is liable under § 1983 for issuing the restraining order in violation of the state-court rules); *id.* at 52-53 (Count 11 - alleging that Judge Whitaker is liable under § 1983 for "perpetuating" the restraining order prohibiting Sain from going within 100 feet of Chappelle's office); *id.* at 53-54 (Count 12 - alleging that Judge Whitaker is liable under § 1983 for denying Sain's motion for reconsideration of his order refusing to set aside the restraining order); *id.* at 63-64 (Count 13 - alleging that Judge Whitaker is liable under § 1983 for failing to incarcerate Snyder for disobeying court orders); *id.* at 64-67 (Counts 14 & 15 - alleging that Judge Walker is liable under § 1983 for failing to take action against or incarcerate Snyder for disobeying custody orders); *id.* at 67-68 (Count 16 - alleging that Judges Romero, Whitaker, and Walker are liable under §§ 1983 and 1985 for conspiring to refuse to take action against

or incarcerate Snyder for disobeying court orders); *id.* at 75 (Count 17 - alleging that Judge Walker is liable under § 1983 for denying Sain's motion regarding child custody); *id.* at 81 (Count 18 - alleging that Judges Alarid and Bustamante are liable under § 1983 for "failing to take action against Snyder, Chappelle and Bennett" after Sain accused them of lying during the appellate process); *id.* at 83 (Count 19 - alleging liability under § 1983 against Judges Alarid, Bustamante, and Kennedy for disregarding the deceit of, and failing to take action against, Snyder, Chappelle and Bennett during the appellate process); *id.* at 83-87 (Count 20 & 21 - alleging liability under § 1983 against Judges Alarid, Bustamante, and Kennedy for failing to make rulings consistent with their prior rulings and for conspiracy with the district court in failing to take action against Snyder, Chappelle, and Bennett); *id.* at 87-88 (Count 22 - alleging liability under § 1983 against Judges Alarid, Bustamante, and Kennedy for failing to make appellate rulings consistent with prior rulings); *id.* at 90-92 (Count 23 - alleging liability under § 1983 against Justices Chavez, Serna, Maes, Bosson, and Daniels for rulings made in alleged disregard of Snyder's, Chappelle's, and Bennett's deceit and for failing to take action against them); *id.* at 92-97 (Count 24 - alleging liability under § 1983 against Justices Chavez, Serna, Maes, Bosson, and Daniels for refusing to disqualify themselves to hear a petition for certiorari); *id.* at 97-98 (Count 25 - alleging liability under § 1983 against Justices Chavez, Serna, Maes, Bosson, and Daniels for refusing to allow Sain to present evidence of his alleged causes

of action against the justices that he wanted to submit as part of his response to a petition for certiorari); *id.* at 98-103 (Count 26 - alleging liability under § 1983 against Justices Chavez, Serna, Maes, Bosson, and Daniels for quashing the petition for writ of certiorari as moot instead of taking action against Snyder, Chappelle, and Bennett); *id.* at 103-106 (Count 27 - alleging liability under § 1983 against Justices Chavez, Serna, Maes, Bosson, and Daniels for denying a motion for reconsideration instead of taking action against Snyder, Chappelle, and Bennett); *id.* at 106-07 (Count 28 - alleging liability under §§ 1983 & 1985 against Judges Walker, Alarid, Bustamante, and Kennedy and Justices Chavez, Serna, Maes, Bosson, and Daniels for conspiring to carry out a policy not to take action against Snyder, Chappelle, and Bennett for their deceit and alleged crimes); *id.* at 107-121 (Count 29 - alleging that Judge Romero is liable to Sain under § 1983 for conspiring to carry out a policy of not taking action against Snyder, Chappelle, and Bennett by ruling against Sain); *id.* at 121-22 (Count 30 - alleging that Judge Romero is liable to Sain under § 1983 for failing to timely adjudicate Sain's Rule-060(b) motion); *id.* at 141 (Count 31 - alleging that Judge Vigil is liable to Sain under § 1983 because he should have recused himself from sitting on an appellate panel and that his failure to recuse resulted in Sain being unable to appeal); *id.* at 145 (Count 32 - alleging liability under §§ 1983 & 1985 against Judges Alarid, Bustamante, Sutin, Pickard, Weschler, and Vigil and against Justices Chavez, Serna, Maes, Bosson, and Minzner for conspiring to "carry out a policy for failing to have a policy when it

comes to Appeals brought based on orally pronounced Orders" and for ruling inconsistently, but always against Sain); *id.* at 149-50 (Count 33 - alleging that Judge Romero is liable to Sain under § 1983 for allegedly lying about telling Sain he had to postpone his education and for refusing to file a written order to that effect); *id.* at 153 (Count 34 - alleging liability under §§ 1983 & 1985 against Judges Romero, Walker, Alarid, Bustamante, and Kennedy, and against Justices Chavez, Serna, Maes, Bosson, and Daniels for conspiring to carry out a policy to not take action "against Snyder, Chappelle, and Bennett for their deceit and crimes"); *id.* at 153-162 (Count 35 - alleging liability under § 1983 against Judges Whitaker and Lang, Clerk of Court Juanita Duran, Attorney General Patricia Madrid and assistant attorney Betsy Salcedo, Governor Richardson, and the Bernalillo County Sheriff's Department because: (i) Chief Judge Lang issued an order without a hearing requiring Sain to be accompanied by court security guards whenever he appeared for hearings in district court, which "terrorized" and "humiliated" Sain and "endangered his life;" (ii) the order was backdated and allegedly unsupported by evidence of a real threat from Sain; (iii) Duran told Sain to put his requests for evidence supporting the order in writing; (iv) Salcedo filed a motion to quash Sain's subpoena to obtain evidence supporting the order and was supervised by Madrid; (v) Judge Whitaker granted the motion to quash subpoena; and (vi) Governor Richardson told Sain that Richardson could not intervene in judicial proceedings because of the separation-of-powers doctrine); *see* Errata (Doc. 29) at 6-8 (Count 6A -

alleging that Judge Romero, Snyder, Chappelle, Guardian ad Litem Richard Stoops, and Justices Bosson, Serna, Maes, and Chavez are liable to Sain under §§ 1983 and 1985 because (i) Stoops allegedly violated interim orders; (ii) Snyder and Chappelle filed a motion to quash Sain's subpoena seeking testimony from his children's therapist and Romero granted the motion; (iii) Romero found Sain to be in civil contempt and had him arrested and incarcerated for refusing to pay child support; and (iv) the Justices denied Sain's petitions for emergency superintending control); *see* Doc. 29 at 8-10 (Counts 7A and 9A - alleging that Lang, Duran, Second Judicial District Court Managing Court Reporter Vicki Aikenhead Ruiz, and Court reporter Joanne DeHerrera, are liable to Sain under § 1983 because they did not make sure adequate safety and security measures were in place to protect the evidence and records "originating in Romero's courtroom during" either a June 9, 2005, a February 9, 2005, or a February 9, 2006 hearing "from being tampered with" and asserting that the appellate courts erroneously denied his contentions of error in that regard); *see id.* at 10-15 (Count 36 - alleging that all of the named Defendants are generally liable to Sain under § 1983 because of the events occurring during the divorce proceedings and the rulings of the various judges and justices that caused, among other things, emotional trauma to him and the loss of the daily care and companionship of his two children and irreparable harm to his reputation and familial relationship).

In support of his causes of action Sain quotes

extensively from the state-district-court transcripts of proceedings, references substantial numbers of orders and appellate rulings with which he disagrees, and bases his damages on the allegedly erroneous rulings and what he perceives as "case-fixing" because he lost in the majority of the rulings. He showed that he had appealed from the adverse rulings to the New Mexico Court of Appeals and to the Supreme Court of New Mexico and had also petitioned for mandamus or injunctive relief. He even improperly attempted to "remove" the state-court divorce and child custody case to federal court, contending that his "right to removal" was based on the Defendants' alleged violation of his constitutional rights in the divorce proceedings. *See* Doc. 37. Magistrate Judge Garcia properly denied Sain's request for an extension of time in which to "remove" and file the state-court records in Sain's federal suit at bar because the divorce proceedings were not properly removable, even if Sain was the defendant in those proceedings. *See* Doc. 75; *see also Ankenbrandt v. Richards & Kesler*, 504 U.S. 687, 703 (1992) (noting that the rule that "the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States, . . . divests the federal courts of power to issue divorce, alimony, and child custody decrees") (internal quotation marks and citations omitted). But Sain contends that removing and filing his state-court divorce and child-custody records into the federal record in this case would "instantly tip the balance of the case in Plaintiff's favor and thereby cause him to win the case on all matters and be granted the relief

he seeks which includes a substantial monetary award." Doc. 116 at 2.

In response to Snyder's contention that Sain's Complaint must be dismissed because he is effectively seeking review of the state-court judgments and decisions, Sain contends that the *Rooker-Feldman* doctrine "is merely another immunity myth fabricated by judges," Doc. 72 at 2, and that the doctrine is void because it arises from cases that have been overruled, *see id.* at 3-5. The Court disagrees with both contentions.

After carefully considering Sain's Complaint and his Errata, it is clear to the Court that all of Sain's constitutional claims – except for his claims against Attorney General Gary King2 and Governor Bill Richardson, which are based on allegations that the two officials failed to intervene in the divorce proceedings – are based on the events occurring during the proceedings and the allegedly erroneous rulings or refusals to rule of the state courts, which "are obviously 'inextricably intertwined' with the state court decisions in a judicial proceeding." *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 (10th Cir. 1986) (holding that the district court did not have jurisdiction, under the *Rooker-Feldman* doctrine, over the plaintiff's § 1983 claims that the state-court judges had violated his constitutional rights by refusing to rule on his slander claims); *see Mann v. Boatright*, 477 F.3d 1140, 1147 (10th Cir. 2007) (holding that, because the plaintiff sought "monetary damages against a variety of government actors and private individuals for the alleged violations of her constitutional rights occasioned by their complicity with the [state-] court's orders," she asserted

"injuries based on the [state-] court judgments and, for her to prevail, would require the district court to review and reject those judgments. As such, her claims are inextricably intertwined with the [state-] court judgments and are therefore barred by the *Rooker-Feldman* doctrine."); *Neilson v. Memmott*, No. 98-4229, 198 F.3d 258, 1999 WL 1029133, *1-*2 (10th Cir. Nov. 12, 1999) (holding that district court lacked subject-matter jurisdiction under *Rooker-Feldman* doctrine to consider action brought under § 1983 for damages from the various defendants for alleged violation of plaintiff's civil rights

2 The Court dismissed Sain's claims against King for failure to state a claim. *See* Doc. 176. resulting from their parts in requesting, issuing, and complying with subpoenas after state court denied plaintiff's motion to quash subpoena because request for damages and other relief was "inextricably entertwined" with the state-court's judgment). To find in favor of Sain on his § 1983 claims would require this Court to conclude that the state district and appellate courts erred in issuing their rulings. Sain's claims require extensive consideration of the underlying state-court decisions and rest on the premise that the rulings were erroneous. Consequently, as in *Mann*, *Van Sickle* and *Neilson*, the Court does not have authority to review the state-court decisions, and Sain's causes of action against the Defendants except for King and Richardson must be dismissed for lack of subject-matter jurisdiction. *See Pennzoil Co.*, 481 U.S. at 25.

C. The Court will set aside the entry of default

against Richardson and deny the motion for reconsideration.

On December 1, 2008, the Clerk of the Court filed an entry of default against Richardson. *See* Doc. 64. Richardson quickly moved to set aside the entry of default the next day, *see* Doc. 70, and the Court has entered an order denying Sain's motion for default judgment against Richardson because Sain failed to properly serve Richardson. *See* Doc. 175, filed April 2, 2009. In the Order, the Court stated that Sain could properly re-serve Richardson and the other Defendants "within 120 days from the date he filed the Complaint," but by the time the Court issued its ruling, the 120-day time period had already passed.

Sain has moved for reconsideration of that order on his assertion that Judge Browning was obviously biased against him because he is friendly with the judges of the New Mexico state courts, and because he believes the ruling is wrong. *See* Doc. 178 at 3. He accused Judge Browning of "sinister motives" in denying his motion for default judgment and also contended that, by issuing the Order denying Sain's motion and setting aside the clerk's entry of default against other state Defendants, Judge Browning "has wilfully and intentionally violated Plaintiff's Rights and Federal law" and was required to recuse. *Id.* at 16. Although Judge Browning quite properly refused to recuse on the basis of Sain's spurious accusations, *see* Doc. 182, Sain's case was reassigned to another judge.

As a preliminary matter, the Court concludes that Sain provides no valid basis for reconsideration of the April 2 Order denying the motion for default judgment. As discussed below in more detail, Sain is

wrong that the Attorney General is the Governor's authorized agent for service of process. Rule 1-004H(1)(e) of the New Mexico Rules of Civil Procedure specifically provides that "service of process on the governor . . . may be made either by serving a copy of the process to the governor . . . or to the receptionist of the state officer." Sain has never properly served Governor Richardson. The Court concludes, therefore, that Sain's motion for reconsideration must be denied and Richardson's motion to set aside the entry of default must be granted.

D. Sain's complaint against Richardson must be dismissed.

The Federal Rules of Civil Procedure requires plaintiffs to serve a copy of the summons and complaint to an individual within the Court's federal judicial district either in the manner prescribed by that State's law, or by delivering a copy of the summons and complaint to the defendant personally, by leaving copies at the individual's dwelling, or by delivering copies to the individual's authorized agent. FED. R. CIV. P. 4(e). Richardson's motion to dismiss is based on FED. R. CIV. P. 4(m), which provides, in part:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an

appropriate period.

FED. R. CIV. P. 4(m). "The good cause provision of Rule 4[(m)]3 should be read narrowly to protect only those plaintiffs who have been meticulous in their efforts to comply with the Rule." *Despain v. Salt Lake Area Metro Gang Unit*, 13 F.3d 1436, 1438 (10th Cir. 1994) (internal quotation marks omitted) (holding that, where the plaintiffs failed to serve the proper parties, good cause was not shown even though the statute of limitations had run, the plaintiffs had misinterpreted the applicable rule of procedure, the defendants failed to show that they would be prejudiced by an extension, and the defendants may have had actual notice of the lawsuit). As Richardson points out, March 2, 2009 was the 120th day after the Complaint was filed in this matter, and Sain still has not properly served Richardson.

The relevant subsection of Rule 1-004 of the New Mexico Rules of Civil Procedure provides:

service of process on the governor, attorney general, agency, bureau, department, commission or institution may be made either by serving a copy of the process to the governor, attorney general, or the chief operating officer of the entity listed in this subparagraph or to the receptionist of the state officer. A cabinet secretary, a department, bureau, agency or commission director or an executive secretary shall be considered as the chief operating officer.

Rule 1-004H(1)(e) NMRA

Thus, Rule 1-004 specifically provides for service of process either personally or, because he is a "state officer," by serving the governor's receptionist. Sain contends that he properly served Richardson by serving the Attorney General, whom he erroneously contends is the Governor's agent for service of process by misinterpreting N.M.S.A. 1978, § 38-1-17D. That statute provides:

In any action in which an officer, official or employee of the state or one of its branches, agencies, bureaus, departments, commissions or institutions is named a party defendant, service of process shall be made on the officer, official or employee

3 FED. R. CIV. P. 4(j) (1987) was amended in 1993 and is now codified as FED. R. CIV. P. 4(m).

and on the attorney general.

N.M.S.A. 1978, § 38-1-17D. This statute clearly requires service of process upon *both* a State officer or official *"and"* on the Attorney General, and Sain ignores the conjunctive requirement. Further, Rule 1-004H(1)(e) is consistent with the New Mexico statute related to service of process, which provides:

Service of process on the governor, attorney general, agency, bureau, department, commission or institution or head thereof shall be made either by handing a copy of the summons and complaint to the head or to his receptionist. Where an executive secretary is employed, he shall be considered as the

head.

N.M.S.A. § 38-1-17H; *see Trujillo v. Goodwin*, 138 N.M. 48, 50, 116 P.3d 839, 840-41 (N.M. Ct. App. 2005) (holding that, because § 38-1-17H requires personal service by "handing" the summons and complaint to the officer, mailing or faxing them the complaint is not sufficient). Sain has failed to satisfy the requirements of FED. R. CIV. P. 4(m) and has failed to show good cause for doing so, thus his cause of action must either be dismissed or, under the Rule, the court may consider granting an extension of time in which to serve Richardson.

Sain's only allegation involving Governor Richardson is that he refused to interfere with Sain's judicial proceedings. Those facts will not support a violation of § 1983 because Sain does not have a constitutional right to have the Governor violate the separation-of-powers doctrine, and to state a claim under § 1983 a plaintiff must allege that the defendant, acting under color of law, deprived the plaintiff of "rights, privileges, or immunities secured by the Constitution" or other federal law. 42 U.S.C. § 1983. If Sain were given an extension of time in which to serve Richardson, the Court would have to dismiss those claims with prejudice. The Court, therefore, will not exercise its discretion to allow Sain an extension of time in which to serve Richardson. *See Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995).

E. Even if the Court did have subject-matter jurisdiction over Sain's suit against the remaining Defendants, Sain's claims would have to be

dismissed for failure to state a claim.
If the Court were to reach the substantive merits of Sain's claims against the remaining Defendants (other than Richardson and King), it would be compelled to dismiss his causes of action against all Defendants with prejudice.

1. Sain's claims brought under §§ 1981, 1982, and 1985 must be dismissed.
Although he does not specify which subsection of 42 U.S.C. § 1985 the Defendants allegedly violated, the Defendants correctly point out that § 1985(1) applies only to conspiracies to interfere with a United States officer or a person about to assume the role of a United States officer; and that § 1985(2) applies only to conspiracies to intimidate witnesses or otherwise obstruct justice in federal courts, not state courts. *See* 42 U.S.C. § 1985(1),(2); *see also Kush v. Rutledge*, 460 U.S. 719, 719 n. 1 (1983). Sain does not allege that any Defendant interfered in any respect with an act by a United States officer or with a federal court proceeding. Sain does allege that he has been denied the equal protection of the laws because the district-court judges selectively enforced the interim orders. The Court, therefore, assumes that Sain is attempting to allege violation of § 1985(3).

Claims under §§ 1981 and 1982 require allegations supporting intentional discrimination resulting from a defendant's racial animus. *See, e.g., Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 609 (1987) (construing § 1981); *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 616 (1987) (construing § 1982). Section 1985(3) requires that

the plaintiff allege "(1) a conspiracy; (2) to deprive plaintiff of equal protection or equal privileges and immunities; (3) an act in furtherance of the conspiracy; and (4) an injury or deprivation resulting therefrom." *Griffin v.Breckenridge*, 403 U.S. 88, 102 (1971). Further, the complaint must allege that the alleged conspiracy is motivated by a "racial or otherwise class-based, invidious discriminatory animus behind the conspirators' action." *United Bhd. of Carpenters & Joiners v. Scott*, 463 U.S. 825, 829-30 (1983) (internal quotation marks omitted); *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993). Sain has not alleged that any Defendant engaged in a class-based or racial conspiracy against him or intentionally discriminated against him on the basis of his race. In the alternative, therefore, the Court would dismiss all of Sain's claims brought pursuant to §§ 1981, 1982, and 1985(3) for failure to state a claim.

2. Sain has failed to state a cognizable claim against any remaining Defendant under § 1983.

i. The judges and settlement facilitator are entitled to absolute immunity.

It is well established that "judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly." *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978). To determine whether a defendant is entitled to absolute judicial immunity, courts consider whether the act itself is a function normally performed by a judge and whether the judge acted in his judicial

capacity. *See id.* at 362. Absolute immunity exists even if the judge's "exercise of authority is flawed by the commission of grave procedural errors," *id.* at 359, and "is overcome in only two sets of circumstances. First, a judge is not immune from liability for nonjudicial acts, *i.e.*, actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (citations omitted). Absolute judicial immunity was not affected or abolished "by § 1983, which makes liable 'every person' who under color of law deprives another person of his civil rights." *Pierson v. Ray*, 386 U.S. 547, 554 (1967), *overruled in part on other grounds by Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

If claims against hearing officers presiding over an adjudication arise out of their adjudicatory acts or decisions, they also are entitled to absolute quasi-judicial immunity. *See Butz v. Economou*, 438 U.S. 478, 512-14 (1978) (holding that agency hearing examiners were entitled to absolute quasi-judicial immunity because their role was "functionally comparable" to that of judge); *Hennelly v. Flor de Maria Oliva*, No. 06-2265, 237 Fed. Appx. 318, 320 (10th Cir. May 20, 2007) (affirming the dismissal of § 1983 claims against both the New Mexico state court judge presiding over a child-custody case and the hearing officer who issued recommended rulings because the "allegations concerned actions [the] Judge [] and Officer [] took in their judicial capacities within the jurisdiction of the state court").

A careful review of Sain's Complaint and Errata show that he complains only of various judges and

the settlement facilitator, Defendant Elizabeth Whitefield, making judicial or quasijudicial rulings while acting in their official capacities in a case over which the judges and facilitator had jurisdiction. All of the judges and the settlement facilitator, therefore, are absolutely immune from suit and, in the alternative, the Court would dismiss the claims against them with prejudice.

ii. The private parties are not subject to liability under § 1983 because they are not state actors.

In order to prevail on a § 1983 claim alleging a deprivation of constitutional rights, a plaintiff must show that he was injured as a result of state action. *See Gallagher v. "Neil Young Freedom Concert"*, 49 F.3d 1442, 1447 (10th Cir. 1995). Private conduct, "no matter how . . . wrongful," may not be redressed by a § 1983 claim. *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999) (internal quotation marks omitted). Snyder and her attorneys Chappelle and Bennett, and Richard Stoops, who was appointed as the guardian ad litem for Sain's and Snyder's children, are all private actors, and, therefore, are not subject to liability under § 1983. *See Beedle v. Wilson*, 422 F.3d 1059, 1073 (10th Cir. 2005) ("The conduct of an attorney acting in his professional capacity while representing his client does not constitute action under color of state law for the purposes of § 1983.") (internal quotation marks omitted).

A private party may be considered a state actor, however, if: (1) "there is a sufficiently close nexus between the government and the challenged conduct such that the conduct may be fairly treated as that of

the State itself, " *Gallagher*, 49 F.3d at 1448 (internal quotation marks omitted); or (2) the state "has so far insinuated itself into a position of interdependence with a private party that it must be recognized as a joint participant in the challenged activity[,]" *id.* at 1451 (internal quotation marks omitted); or (3) "a private party is a willful participant in joint action with the State or its agents, " *id.* at 1453 (internal quotation marks omitted); or (4) "the state delegates to a private party a function traditionally exclusively reserved to the State," *id.* at 1456 (internal quotation marks omitted). It appears that Sain is attempting to base liability under § 1983 against private actors on the "joint action" theory by baldly alleging a conspiracy between Stoops, Snyder, Chappelle, Bennett, and Judge Romero to quash a subpoena, obtain an order of civil contempt or a restraining order, or to tamper with the record by failing to file exhibits in the record or by replacing those exhibits or by deleting part of the recorded transcript.

But "a private party's mere invocation of state legal procedures does not constitute joint participation [with a judge] and thus is not state action" *Read v. Klein*, No. 99-5058, 1 Fed. Appx. 866, 871, 2001 WL 20818, **5 (10th Cir. January 9, 2001) (affirming dismissal of § 1983 action against private party and his attorney for obtaining an order that the plaintiff alleged violated his constitutional rights). Further, "[w]hen a plaintiff in a § 1983 action attempts to assert the necessary 'state action' by implicating state . . . judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the

pleadings must specifically present facts tending to show agreement and concerted action." *Sooner Prods. Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983). This "standard is even stricter where the state officials allegedly involved in the conspiracy are immune from suit, as [is] the state court judge[ ] here." *Id.* Sain's conclusory allegations of conspiracy are not sufficient to show state action by Stoops, Snyder, Chappelle, or Bennett. Thus, if the Court were to alternatively reach the merits of this case, the Court would dismiss the 1983 claims ~~against~~ them with prejudice.

iii. Sain has not stated a cause of action against Duran, Ruiz, De Herrera, Madrid, Salcedo, or the Bernalillo County Sheriff's Office.

Sain's only allegations involving Duran are that she told him he had to put requests for information in writing and that she was negligent in failing to ensure that court records were not tampered with. His only claims against Ruiz and DeHerrera are that they, too, negligently failed to make or enforce a policy that would ensure that records were not tampered with. Telling a person that he needs to put a request in writing does not violate a constitutional right. And "[n]either simple nor gross negligence implies an intentional and deliberative violation of constitutional rights, and consequently neither form of negligence satisfies the scienter requirement of § 1983." *Woodward v. City of Worland*, 977 F.2d 1392, 1399 n.11 (10th Cir. 1992). Therefore, the Court would dismiss Sain's claims against Duran, Ruiz, and DeHerrera with prejudice for failure to state a claim.

Sain's only allegation involving Madrid is that she supervised Salcedo and that Salcedo filed a motion to quash a subpoena, which was granted. But "[i]ndividual liability under § 1983 must be based on personal involvement in the alleged constitutional violation," *Foote v. Spiegel*, 118 F.3d 1416, 1423 (10th Cir. 1997), and Sain does not allege that Madrid was personally involved in Sain's case. Thus, to the extent Sain attempts to hold Madrid liable as a supervisor, the theory of negligent supervision cannot provide a basis for liability under § 1983. *See Darr v. Town of Telluride*, 495 F.3d 1243, 1256 (10th Cir. 2007). Further, "there is no concept of strict supervisor liability under section 1983." *Jenkins v. Wood*, 81 F.3d 988, 994 (10th Cir. 1996) (quotation marks omitted). "[I]t is not enough for a plaintiff merely to show a defendant was in charge of other state actors who actually committed the violation." *Id.* Rather, "the plaintiff must establish a deliberate, intentional act by the supervisor to violate constitutional rights." *Id.* at 994-95 (quotation marks omitted).

Further, Sain has not stated a violation of his constitutional rights by alleging that Salcedo filed a motion to quash a subpoena. If it reached the merits, the Court would dismiss the claims against both defendants with prejudice for failure to state a claim.

The only facts Sain alleges regarding the Bernalillo County Sheriff's Department is that certain unnamed deputies carried out Judge Lang's order to accompany Sain to hearings within the courthouse. These allegations do not support a claim for violation of Sain's constitutional rights, and, as an alternative holding, the Court would dismiss

Sain's claims against the Bernalillo County Sheriff's Department with prejudice for failure to state a claim.

F. The Court will deny the motions to amend as futile.

As was his practice in the state-court proceedings, when Magistrate Judge Garcia, acting in his capacity as the assigned magistrate judge with jurisdiction to make certain rulings in this case, issued procedural rulings adverse to Sain, he contended that Judge Garcia was "lying" and "fabricating false allegations against" Sain and that his rulings demonstrated an "intent to corruptly influence the outcome of this case." Doc. 85 at 4-12. Sain contends that Judge Garcia violated Sain's constitutional rights by issuing the rulings and by not issuing similar rulings adverse to the Defendants, thereby purportedly conspiring with them. *See id.* at 11-18. Sain seeks to amend his federal complaint to add Judge Garcia as a Defendant. *See* Docs. 85, 116. As mentioned, *supra*, judges are absolutely immune from suit under the circumstances in this case, and Sain's amendment seeking to add Judge Garcia as a Defendant would be futile, so the Court will deny the motions to amend.

G. Recusal is not necessary in this case.

On January 22, 2009, Judge Browning wrote a letter to the parties informing them that he knew and/or was professionally or casually friendly with certain of the Defendants in this case. *See* Doc. 127. He advised them that he believed he could be impartial

despite his acquaintance with the Defendants, but informed the parties that if anyone desired the case to be reassigned to another judge, he or she need only contact the clerk of court. *See id.* at 5. No one requested reassignment. After receiving Judge Browning's first opinion and order that was adverse to him, however, Sain bitterly complained in April 2009 that Judge Browning had an "obvious conflict of interest" and was "as corrupt as [Judge] Garcia" because of his acquaintances, and he asserts that Judge Browning should have disqualified or recused himself from hearing the case. *See* Doc. 178 at 2. Of course, "[t]he judicial process can hardly tolerate the practice of a litigant with knowledge of circumstances suggesting possible bias or prejudice holding back, while calling upon the court for hopefully favorable rulings, and then seeking recusal when they are not forthcoming." *Franks v. Nimmo*, 796 F.2d 1230, 1234 (10th Cir. 1986). Sain has now threatened to sue Judge Browning.

The case was randomly reassigned to me on April 10, 2009. I, too, am professionally acquainted with many of the state-court judges whom Sain has sued, and of course I have a collegial, professional relationship with Judge Garcia and Judge Browning. I do not believe, however, that my relationship with these judges requires my recusal from this case. Further, especially in light of the history and posture of this case, I have no doubt that I can remain impartial. I believe the better course is for me to remain in the case and resist recusal.

Although federal judges are required to avoid the appearance of bias or partiality and to recuse themselves if their "impartiality might reasonably be

questioned." 28 U.S.C. § 455(a), [a] judge's duty to hear cases is not so ephemeral that it dissipates at the first sight of any potential bias or partiality towards one of the litigants. *United States v. Hines*, 696 F.2d 722, 729 (10th Cir. 1982) ("[S]ection 455(a) must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice."). Moreover, "[t]he statute is not intended to give litigants a veto power over sitting judges, or a vehicle for obtaining a judge of their choice." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir.1993). *Cooley* expressly states that prior adverse rulings and "baseless personal attacks on or suits against the judge by a party" are not cause for recusal. *Id.*

Armstrong v. Potter (In re Potter), 292 B.R. 711, 711 n.1, 2002 WL 31802978, **1 (10th Cir. BAP 2002) (refusing to recuse even though the plaintiff had filed a separate civil suit in federal court against each of the judges on the appellate panel, alleging that the judges denied his constitutional rights by issuing previous rulings and seeking to prohibit the appellate panel from hearing any matters to which he was a party). Magistrate Judge Garcia had no duty to recuse or disqualify himself because his rulings were adverse to Sain or because Sain accused him of conspiring with the Defendants and threatened to sue him. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"); Committee on Codes of Conduct, Compendium of Selected Ethics Opinions § 3.6-7

(2007) ("A judge need not recuse from a case involving a party that filed suit against the judge, where judicial immunity will be a complete defense to the action against the judge."). And Judge Browning had no duty to recuse or disqualify himself simply because he was professionally or casually acquainted with the Defendants. Sain's remedy is to appeal from the rulings, not to sue the judges.

Although I predict that Sain will accuse me of bias and threaten to sue me when he receives this ruling, I will not recuse from this case. 28 U.S.C. § 455 "places the judge under a self-enforcing obligation to recuse himself where the proper legal grounds exist." *In re McCarthey*, 368 F.3d 1266, 1269 (10th Cir. 2004). I first note that, at this point Sain has not sued me and no statute requires my recusal. But even where a litigant has sued all of the judges in a district, the rule of necessity allows one of the judges sued to preside over the case. Thus, while the Court could arrange for an out-ofdistrict judge to preside over Sain's case, it is not necessary even where recusal would normally be required by statute under the facts of this case. *See Bolin v. Story*, 225 F.3d 1234, 1238-40 (11th Cir. 2000) (explaining that when a litigant sues all judges but one, the rule of necessity permits the court to hear the case and reject recusal).

The initial inquiry for recusal "is whether a reasonable factual basis exists for calling the judge's impartiality into question." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993). The ultimate question on in the recusal analysis is " 'whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality.'

" *United States v. Burger*, 964 F.2d 1065, 1070 (10th Cir. 1992) (quoting *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987)). The standard is purely objective. *United States v. Cooley*, 1 F.3d at 993. The Tenth Circuit has emphasized that "[t]here is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is." *Hinman*, 831 F.2d at 939.

Although I am familiar with certain of the state-court judges, that does not provide an objective factual basis for my recusal. The Tenth Circuit and other courts have identified mere familiarity with the defendants as one of the factors which will not ordinarily satisfy the requirements for disqualification. All of the judges are being sued for their official and judicial acts, for which they are absolutely immune, thus my professional or casual friendship with the other judges in this state will not provide an objective factual basis for my recusal and does not compel assignment to an out-of-district judge. I will stand by my obligation and duty to hear this case. *Cooley*, 1 F.3d at 994.

H. Summary

The Court understands that Sain feels that he was unfairly treated in the divorce and custody proceedings and that those proceedings resulted in a painful, but inevitable, change in his life. Virtually every ruling in a divorce and custody proceeding results in a painful or adverse consequence to one of the parties. But the allegations in Sain's Complaint and Errata, and his statements made in numerous briefs and motions demonstrate that Sain has many erroneous concepts about how basic procedural and

substantive law are applied and show that he has been unable to make distinctions between legal rulings, which resulted in many adverse rulings in the state district and appellate courts. This Court does not have jurisdiction to re-examine those proceedings and rulings that resulted in the pain or harm that Sain allegedly suffered, however. The Court notes that it has been Sain's practice to move for reconsideration of all adverse rulings by making the same arguments he has already made and accusing the judge of bias, sinister motives, and conspiracy with the Defendants. The Court will not entertain any further motions for reconsideration. Sain's remedy is to appeal from the Court's final judgment that will be issued concurrently with this memorandum opinion and order.

IT IS ORDERED that Snyder's Motion to Dismiss [Doc. 49] based on application of the *Rooker-Feldman* doctrine is GRANTED, and Sain's claims against all Defendants except for Governor Richardson and Attorney General King are dismissed for lack of subject-matter jurisdiction;

IT IS FURTHER ORDERED that Richardson's Motion to Set Aside Default [Doc. 70] and his Motion to Dismiss [Doc. 165] are GRANTED, and Sain's claims against Richardson are dismissed; and

IT IS FURTHER ORDERED that Sain's Motions to Amend/Correct [Docs. 85, 116] are DENIED.

ROBERT C. BRACK

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHARLES J. SAIN,
Plaintiff,

vs.

No. CIV 08-1019 RB/LFG
Filed 07/17/2009
Doc. No. 225

CAROLYN M. SNYDER, et. al.
Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

THIS MATTER comes before the Court on pro se Plaintiff Charles J. Sain's Motion for Relief From Judgement [sic], filed June 3, 2009 (Doc. 214). Sain requests that the Court reconsider and reverse the rulings made in its Memorandum Opinion and Order dated May 13, 2009 (Doc. 212) and in other Orders.

The Court filed a separate Rule 58 final judgment on May 13, 2009, starting the thirty-day time period in which Sain could file a notice of appeal. *See* Doc. 213; FED. R. CIV. P. 58(c)(2)(A); FED. R. APP. P. 4(a)(1). Sain filed his Rule 60 motion on June 3, 2009, twenty-one days after entry of the final

judgment.

Before the Defendants filed a response, on June 9, 2009, Sain filed a timely notice of appeal. *See* Doc. 217.

[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.

Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). The only exceptions to this rule are that, after a notice of appeal has been filed, a district court may still make collateral rulings, *see City of Chanute v. Williams Natural Gas Co.*, 955 F.2d 641, 658 (10th Cir. 1992) ("The law is well settled the district judge retains jurisdiction over the issue of attorneys' fees even though an appeal on the merits of the case is pending."), *overruled on other grounds, Systemcare Inc. v. Wang Lab. Corp.*, 117 F.3d 1137 (10th Cir.1997)), or rulings that will aid the appellate jurisdiction, *see Aune v. Reynders*,344 F.2d 835, 841 (10th Cir. 1965) ("In ordinary civil cases the rule is that after an appeal has been taken the district court retains jurisdiction to consider and deny a Rule 60(b) motion and, if it indicates that it will grant the motion, the movant may then ask the Court of Appeals to remand the case so that the district court may act. If the motion is denied, the movant may appeal from the order of denial.") (footnote omitted).

In addition, a Rule 59 motion to alter or amend

the judgment or a Rule 60 motion for relief from judgment made within ten days of the final order will toll the vesting of jurisdiction in the appellate court until the district court has ruled on the motion. *See* FED. R. APP. P. 4(a)(4); *Griggs*, 459 U.S. at 58-9; *cf. Society of Lloyd's v. Bennett*, No. 05-4069, 182 Fed. Appx. 840, 844 (10th Cir. 2006) ("The district court correctly held that it lacked jurisdiction to grant relief under Rule 60(b) due to the pending appeal"); *Jordan v. Bowen*, 808 F.2d 733, 736 (10th Cir. 1987) (noting that the district court had properly "recognized that it had no jurisdiction to *grant* relief from judgment under Fed.R.Civ.P. 60(b) since an appeal was then pending in this Court") (italics in original).

Because Sain's motion was not filed within ten days of the filing of the final judgment, "the fact the motion is still pending in the district court does not foreclose the present appeal" and the Tenth Circuit has jurisdiction over this case and all of the issues raised in the motion to reconsider. *Ortiz v. Nance*, No. 97-2187, 161 F.3d 18, 1998 WL 614437, *2 (10th Cir. Sept. 4, 1998); *Hatfield v. Bd. of County Comm'rs*, 52 F.3d 858, 861 (10th Cir. 1995) (holding that "a pending Rule 60(b) motion does not prevent an otherwise valid notice of appeal from conferring jurisdiction on the court of appeals"). The Court will, therefore, deny the motion in aid of appellate jurisdiction. *See Aune*, 344 F.2d at 841.

WHEREFORE,
IT IS ORDERED that Sain's Motion for Relief from Judgement [sic] (Doc. 214) is
DENIED.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHARLES J. SAIN,
Plaintiff,

vs.

No. CIV 08-1019 RB/LFG
Filed 07/27/2009
Doc. No. 230

CAROLYN M. SNYDER, et. al.
Defendants.

ORDER DENYING OBJECTION

THIS MATTER comes before the Court on pro se Plaintiff Charles J. Sain's Objection to Order Denying Motion for Reconsideration, filed July 20, 2009 (Doc. 226). Sain contends that the Court erroneously denied his motion for reconsideration, which he filed twenty-one days after entry of final judgment under Rule 60(b) of the Federal Rules of Civil Procedure. He asserts that the United States Supreme Court's opinion in *Stone v. I.N.S.*, 514 U.S. 386 (1995), establishes that this Court retained jurisdiction to grant his motion after he filed a

Notice of Appeal.

Sain is incorrect. The Supreme Court in *Stone* noted only that "that the filing of a *Rule 59* motion to alter or amend a district court's judgment strips the appellate court of jurisdiction, whether the Federal Rule of Civil Procedure 59 motion is filed before or after the notice of appeal." *Id.* at 397 (italics added). As the Court explained in its July 17, 2009 Order, Sain's motion to reconsider was *not* one brought under Rule 59 because it was filed more than ten days after final judgment. It did not, therefore, toll the Tenth Circuit's appellate jurisdiction over this case.

IT IS ORDERED that Sain's Objection to Order Denying Reconsideration (Doc. 226) is DENIED.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHARLES J. SAIN,
Plaintiff,

vs.

No. CIV 08-1019 RB/LFG
Filed 07/29/2009
Doc. No. 233

CAROLYN M. SNYDER,
Defendants.

ORDER DENYING PLAINTIFF'S OBJECTION TO ORDER DENYING OBJECTION

THIS MATTER comes before the Court on pro se Plaintiff Charles J. Sain's Objection to Order Denying Objection, filed July 27, 2009 (Doc. 232). In this document, Mr. Sain seeks reconsideration of the Court's denial of his Motion for Relief from Judgment, herein construed as a Rule 60(b) motion. As the Court noted in the Order Denying Motion for Reconsideration (Doc. 225), the filing of a notice of appeal generally divests the district court of jurisdiction over aspects of the case involved in the appeal. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Therefore, this Court lacks jurisdiction to grant relief under Rule 60(b) due to the pending appeal. *Id.*

At the same time, the Court recognizes that it has jurisdiction to entertain and deny the Motion for Relief from Judgment. Notably, a district court is free to consider a Rule 60(b) motion and either deny the motion on the merits or notify the Tenth Circuit that the Court would grant the motion upon proper remand. *Aldrich Enters., Inc. v. United States*, 938 F.2d 1134, 1143 (10th Cir. 1991). For this reason, the Court considered the arguments advanced by Mr. Sain in the Motion for Relief from Judgment and found them to be without merit.

It bears underscoring that Rule 60(b) is not a tool to rehash previously-presented arguments already considered and rejected by the Court, nor does it

provide a vehicle to present new arguments based upon law or facts that existed at the time of the original argument. *FDIC v. United Pacific Ins. Co.*, 152 F.3d 1266, 1272 (10th Cir. 1998); *Van Skiver v. United States*, 952 F.2d 1241, 1243-44 (10th Cir. 1991). Whether to grant a Rule 60(b) motion rests within the district court's discretion. *See Beugler v. Burlington N. & Santa Fe Ry. Co.*, 490 F.3d 1224, 1229 (10th Cir. 2007). The arguments presented by Mr. Sain in the Motion for Relief from Judgment seek to re-litigate the legal issues on which the Court relied in the Memorandum Opinion and Order of May 13, 2009. To the extent Mr. Sain presents new arguments, the Court finds such arguments to be unfounded. For these reasons, the Motion for Relief from Judgment has been denied. The Court's prior rulings stand.

Mr. Sain has continued his pattern of filing redundant and increasingly obstreperous documents and he is instructed that he is not to file any further motions or documents in this case because jurisdiction over it is now with the Tenth Circuit Court of Appeals. Any further frivolous filings may result in the imposition of monetary sanctions for contempt of this Order. Additionally, Mr. Sain's documents filed of record contain scandalous allegations that offend the dignity of this Court. Mr. Sain is admonished that the filing of any document containing derogatory comments concerning this Court may result in serious sanctions against him for contempt of Court.

WHEREFORE,
IT IS ORDERED that Mr. Sain's Objection to Order

Denying Objection (Doc. 232) is DENIED.
IT IS FURTHER ORDERED that the filing of any document containing frivolous arguments or derogatory comments concerning this Court may result in serious sanctions against Mr. Sain.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE

No.10

IN THE SUPREME COURT
OF THE UNITED STATES

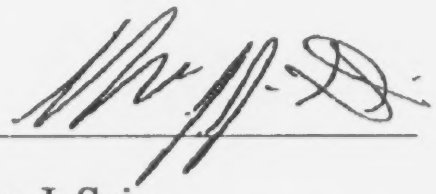
CHARLES J. SAIN,
Plaintiff,

v.

CAROLYN M. SNYDER, et al.,
Defendants.

APPENDIX III TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

By: 

Charles J. Sain,
Plaintiff
10018 Inca Ct. N.E.,
Albuquerque, NM 87111,
(505) 298-1007

OTHER CASES*

At 10th Circuit Court of Appeals

09-2109, 1:08-CV-00449-JB-DJS
09-2111, 1:07-CV-00287-JB-RLP

At U.S. Supreme Court

09-10305
Christopher Ynosencio Ysais (Petitioner)
v.
Consuelo A. Ysais' (Defendant

No. 09-10025
Christopher Ynosencio Ysais (Petitioner)
v
New Mexico Children, Youth and
Families Department, et al. (Respondents)

No. 09-9442
Christopher Ynosencio Ysais (Petitioner)
v
Mathew G Reynolds, et al. (Respondent)

The above cases are all related to the instant case in the sense that they all arise out of the same corrupt New Mexico Courts under relatively similar circumstances and use similar arguments and authorities. The Consolidated Appeals from which

the instant Petition arises and the above referenced case No. 09-2109, 1:08-CV-00449-JB-DJS even cross-reference each other in regards to the lying matter (see the lying issue, pp. 14-15 of the Petition).

No.10

IN THE SUPREME COURT
OF THE UNITED STATES

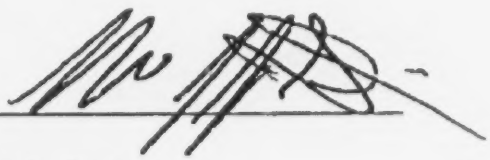
CHARLES J. SAIN,
Plaintiff,

v.

CAROLYN M. SNYDER, et al.,
Defendants.

APPENDIX IV TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI

Respectfully submitted,

By: 

Charles J. Sain,
Plaintiff
10018 Inca Ct. N.E.,
Albuquerque, NM 87111,
(505) 298-1007

This Appendix contains copies of the text of pp. 35-37 of 10TH Cir. Doc. No. 01018344509 (REPLY BRIEF) wherein Sain challenges jurisdiction as non-existent, pp. 13-14, of 10th Cir. Doc. No. 01018392397, where in § 38 and FN 3, wherein Sain again challenged jurisdiction and claimed (therein and by reference to other documents) that jurisdiction below had never attained. Also included is the text of the CONCLUSION Sain's REPLY BRIEF (pp. 53-54, 10th Cir. Doc. No. 01018344509) wherein he requested relief from the Court based on multiple reasons including lack of jurisdiction.

Text of pp. 35-37 of
10TH Cir. Doc. No. 01018344509

Although defendant Snyder sought to attack (see her statement about wanting to "hurt" Appellant, 10th Cir. Doc. 01018081803, p. 152) Appellant under the facade of a "divorce" (App. at Volume I, p. 35) because he discovered her extra-marital relationship, "State's et. al." have (although they cite p. 35 of the record, in their Brief ("AP"), 10th Cir. Doc. 01018324559, p. 3) failed to identify where in the initiating document filed March 28, 2003, (also referenced by them) a citation is made that specifies what N.M. Statute the "case" was brought under if any and what that citation says that the statute was ("Court must prove on the record, all

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jurisdiction facts related to the jurisdiction asserted", *Latana v. Hopper*, 102 F.2d 188; *Chicago v. New York*, 37 F.Supp 150). Because Appellant asserts that such a citation does not exist ("Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal.", *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So.2d. 368 (Fla. 2nd DCA 1985)) they have failed ("Once challenged, jurisdiction cannot be assumed, it must be proved to exist.", *Stuck v. Medical Examiners*, 94 Ca. 2d. 751, 211 P.2d. 389; "[T]he burden of proving jurisdiction is on the party asserting it," *Gibson v. Jeffers*, 478 F.2d 216, 221 (10th Cir.1973)) to disprove Appellant's claims, claims that Appellant does recall raising years ago in the State portion of the "case" but which were, just as all matters favorable to Appellant were, consciously avoided and ignored by "the Enterprise", that the case was not brought under any specified law (Appellant's Brief ("AB"), pp. 11-14) therefore "State's et. al."'s references that this case arose as a "divorce with custody" and as a "child custody suit" (Appellee's Brief ("AP"), pp. 1-3, 10th Cir. Doc. No. 01018324559, pp. 7-9) are unsupported and must be disregarded as well as any argument, authority or Court Order they rely on as support for them the fact that the "case" has been ongoing for nearly seven years now notwithstanding. "State's et. al." have filed to prove that jurisdiction ever attained therefore every act "the Enterprise" has taken against Appellant and his Children since the unspecific legal action began is void and a Due Process and Equal Protection violation and every "Enterprise" participant as well as every other judge,

Court Clinician, therapist and person and entity associated with the prosecution of the "case" against Appellant and his Children for the last seven years is liable in both their personal and official capacities.

COPY OF THE TEXT OF pp. 13-14 OF
10TH Cir. Doc. No. 01018392397

some unidentified person or persons from the 10th Circuit have and are ongoingly attacking him with ARMED GOVERNMENT TROOPS for filing or possibly filing unidentified documents which are allegedly "threatening" although no threat has been specified. This attack can only be described as a manifest abuse of judicial power and an unlawful abuse and waste of United State's Court resources and money.

38) Third, prior to their massive surprise and ambush attack the 10th Circuit Court attempted to prevent the filing of Appellant's Reply Brief (10th Cir. Doc. No. 01018344509) and his Exhibit 15 (although they did not attempt to eliminate 10th Cir. Cons. Case No. 09-2153/09-2175 Doc. No. 9726460 (FN 2) which was also sent in the same envelope and filed with the other two Docs. thereby proving their actions were selective) which together not only defeated the claims in the Appellee's

Briefs but showed that none of them had responded at all to Appellant's Second Appeal (FN2) but that the State's Defendant's had failed to prove that jurisdiction had ever attained at the State level thereby making that has been done to he an his Children by "the

(FN 2) "Additionally, none of the Appellees argue against Brack's dismissals of Appellant's Rule 60 Motion and his two related Objections being reversed or remanded thereby agreeing to do so. (See 10th Cir. Doc. No. 01018344509, prayer, p. 53)

Enterprise" since the beginning of the "case" more than seven years ago void (FN3).

39) Although authorized by 10th Circuit Doc. No. 01018328506, the Court filed and transmitted over the Internet (crossing state lines between Colorado where the 10th Circuit Court of Appeals is to New Mexico where Appellant is) as a foreseeable consequence in the normal course of the business of the Court thereby effecting Interstate Commerce 10th Circuit Doc. No. 01018345872 claiming Appellant's Brief was oversized, there weren't enough copies and that Exhibit 15 had not been filed with the hard copy.

40) As proven in Appellant's Exhibit 21 (attached), after Appellant had proven to the Court that his Brief was correctly filed and that he had two witnesses that would verify that Exhibit 15 was included with his Reply and that tampering with the U.S. Mail was

punishable by fine and imprisonment, it took only

FN 3 ""State's et. al." have filed to prove that jurisdiction ever attained therefore every act "the Enterprise" has taken against Appellant and his Children since the unspecific legal action began is void and a Due Process and Equal Protection violation and every "Enterprise" participant as well as every other judge, Court Clinician, therapist and person and entity associated with the prosecution of the "case" against Appellant and his Children for the last seven years is liable in both their personal and official capacities." (See 10th Cir. Doc. No. 01018344509, § 30, p. 37. Note spelling of the word failed erroneously spelled as filed, error in original)

"jurisdiction never having attained below" (See 10th Cir. Doc. No. 01018344509, prayer, p. 54)

COPY OF THE TEXT OF pp. 53-54 OF
10TH Cir. Doc. No. 01018344509
WHICH WAS REFERENCED IN
10TH Cir. Doc. No. 01018392397
(SEE ABOVE)

As proven herein, the Appellees seek to have Appellant's Consolidated Appeal denied but the bases for their requests are deceptive, invalid,

frivolous, fraudulent and meritless and therefore fail to provide grounds for said denial. Additionally, none of the Appellees argue against Brack's dismissals of Appellant's Rule 60 Motion and his two related Objections being reversed or remanded thereby agreeing to do so. Also, because the Appellees have admitted all of the claims in Appellant's Consolidated Brief they agree that the relief he requested therein should be granted. Therefore, there being no grounds for dismissal and jurisdiction never having attained below, Appellant's Consolidated Appeal should be immediately granted and the Order carried out by the State of New Mexico or by Federal takeover.